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No. '98-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1998

BENJAMIN P. ZVENIA, Petitioner,

vs.

STATE OF NEVADA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM A FINAL JUDGEMENT BY THE NEVADA SUPREME COURT

BENJAMIN P. ZVENIA, N.M.D., J.D.
1025 Sierra Vista, #70
Las Vegas, NV 89109
(702) 734-3468
Petitioner "Pro Se"

August 10, 1998

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QUESTIONS PRESENTED

I. Did the State of Nevada have the authority to legislate out of existence the profession of Naturopathy/Naturopathic Healing and its practitioners, Naturopathic Physicians which have been in existence prior to the Constitution of the United States, existing through the enactment of the Constitution of the United States, distinguished by Congressional Legislation in an Act of Congress and then place said federally recognized profession in a subsumed position within the Medical Practice Act?

II. Is not a right protected by the Constitutional guarantee of liberty, the right, to follow a recognized and legitimate occupation?

III. Was it not incumbent upon the State of Nevada through the doctrine of implied federal preemption to recognize and develope regulatory guidelines for the practice of the healing art known as Naturopathy/ Naturopathic Healing at least consistent with federal legislation as enacted by a 1929 Act of Congress (S.3936) [Public No. 831] {45 St. 1339}, associated clarifying Amendment of 1931 (HR 12169), and current controlling federal agency law?

IV. Could the State of Nevada by and through its Legislature in the exercise of police power legally permit one class of healing arts practitioners while conversely prohibiting another class of equally trained and qualified practitioners which are federally defined and recognized, so far as the protection of the public health is concerned, from doing the same or equivalent function?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM A FINAL JUDGEMENT BY THE NEVADA SUPREME COURT

PRAYER

The Petitioner, Benjamin Zvenia, respectfully prays that a writ of Certiorari issue to review the judgement and opinion of the Nevada Supreme Court, entered in the above proceeding on May 14, 1998.

OPINIONS BELOW

The opinion(s) of the Nevada Supreme Court on 5/14/98 affirmed the judgement of conviction Court of Appeals for the Eighth Circuit is that this court affirms the

judgement of the district court and this judgement is not at the time of filing printed in P.2d but is reprinted in the appendix hereto, Appendix Exhibit A1, infra. Additionally, the Nevada Supreme Court in this Opinion recited and resurrected its decision in Petitioner's Writ of Prohibition submitted in conjunction to challenge the constitutional invalidity of the repeal of NRS 633A, the Naturopathic Healing statute, to which the Nevada Supreme Court denied said writ and stated, "... the legislature 'is free to enact any law provided it is not clearly prohibited by some provision of the Constutition of the United States or the Nevada Constitution. Whether a legislative enactment is wise or unjust is not a determination to be made by the judicial branch.' *Koscott Interplanetary, Inc. v. Draney*, 90 Nev. 450, 456, 530 P.2d 102, 112 (1974). Further 'even a legitimate occupation may be restricted or prohibited in the public interest.' Id. (citations omitted). This judgement is also not printed in P.2d but is reprinted in the appendix hereto, Appendix Exhibit A2, infra. Further, Petitioner petitioned for Rehearing in this matter which was denied on

4/21/93 and a copy this judgement is reprinted in the appendix hereto, Appendix Exhibit A3, infra.

The decision of the District Court for the Eighth Judicial District, State of Nevada on 3/1/94 was to adjudge Petitioner guilty after denying Petitioner's theory of defense based upon the matter contained herein in accordance with an entered nolo contendre plea to Count Three of the Grand Jury indictment, dismiss all remaining counts and retaining the right to raise on direct appeal the material questions of law raised in this matter. The Petitioner surrendered to custody on 6/21/94 with the Judgement of Conviction being entered in this matter on 7/15/94. These decisions are reprinted in the appendix hereto, Appendix Exhibit A4, infra. Further, the history of this matter includes a Request To Take Judicial Notice submitted early on before the District Court which was denied by the District Court and taken up to the Nevada Supreme Court as an interlocutory appeal to the Nevada Supreme Court to which the Nevada Supreme Court on 1/28/93 denied said appeal and stated "No statute or court rule provides for an appeal

from an oral order denying a request to take judicial notice. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. See *Castillo v. State*, 106 Nev. 349, 792 P.2d 1133 (1990). We conclude, therefore, that we lack jurisdiction to entertain this appeal, ..." This judgement is not a printed decision and is reprinted in the appendix hereto, Appendix Exhibit A5, infra. Further, Petitioner petitioned for Rehearing in this matter which was denied on 4/21/93 and a copy this judgement is reprinted in the appendix hereto, Appendix Exhibit A6, infra.

It should also be noted with the history of this matter, that while the end result being this matter here stems from a grand jury indictment, this matter was initiated via a criminal complaint (90F-45165x) in the Justice Court for the Township of Las Vegas to which Petitioner duly submitted a Petition Seeking Declaratory Judgement under 28 U.S.C. § 2201 to protect all constitutional and federal claims. Said criminal complaint was dismissed upon return of the grand jury indictment

(Case C099837) and according to oral order of the Justice Court judge, said Petition was to be transferred to the District Court to be ruled on. As of this date, NO ruling has ever been given on this specific motion, though a broad denial of all pretrial motions was made by the District Court judge. (Material excerpts are seen in the appendix hereto as Appendix Exhibit A6, infra.)

JURISDICTION

The judgement below (Appendix Exhibit A1, infra.) was entered on the 14th day of May, 1998. Rehearing was not sought. Further, Petitioner would proffer that at all times, stages and proceedings that NOW bring this matter to this great court's attention is the material fact that Petitioner raised time and time again the continuing violations of federal law/ congressional intent, federal agency law, & constitutional rights which were to be protected and not disregarded or ignored.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 and the following caselaw should be applicable:

"Where the court has jurisdiction on the ground that the constitutionality of a state law is involved, it may dispose of all questions in the case." ***Scott v. Donald***, 17 S.Ct. 165 U.S. 58, 41 L.Ed. 632 (1897).

"Where conviction is obtained in state court and corrective process is provided by state and error, in relation to federal question of constitutional violation, creeps into record, the United States Supreme Court has responsibility to review state proceedings." ***Hawk v. Olson***, 66 S.Ct. 116, 326 U.S. 271, 90 L.Ed. 61 (1945).

"Issue whether federal question was sufficiently and properly raised in state courts is itself ultimately a federal question, as to which Supreme Court is not bound by decision of state courts." ***Street v. New York***, 89 S.Ct. 1354, 394 U.S. 576, 22 L.Ed.2d 572, on remand 250 N.E.2d 250, 24 N.Y.2d 1026, 302 N.Y.S.2d 848 (1969).

"Presence of federal question is sine qua non of exercise of appellete jurisdiction by United States Supreme Court over decision of state court." ***Pelliccioni v. Schuyler Packing Co.***, 356 A.2d 4, 140 N.J.Super. 190 (1976).

"Federal rights are denied as well by refusal of the state court to decide a question, as by an erroneous decision of it; where a federal question is raised and, if decided adversely to state law, is controlling, a state high court does not defeat federal review merely by issuing a tight-lipped decision in favor of the challenged state law; although state court may not discuss the federal issue, for purposes of United States Supreme Court appellate review it necessarily decides against federal rights by upholding state law."

Super Tire Engineering Co. v. McCorkle, 550 F.2d 903, certiorari denied 98 S.Ct. 106, 434 U.S. 827, 54 L.Ed.2d 86, rehearing denied 98 S.Ct. 753, 434 U.S. 1025, 54 L.Ed.2d 773 (1977).

"The possibility of a criminal defendant suffering collateral legal consequences from a sentence already served permits him to have his claims reviewed in Supreme Court on the merits." ***Pennsylvania v. Mimms***, 98 S.Ct. 330, 434 U.S. 106, 54 L.Ed.2d 331, on remand 385 A.2d 334, 477 Pa. 553 (1977).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES ORDINANCES & REGULATIONS INVOLVED

I. The **Fifth Amendment**, United States Constitution provides:

> "No person ... shall be deprived of life, liberty, or property, without due process of law ..."

II. The **Fourteenth Amendment**, **Section 1**, United States Constitution provides:

> "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"

III. **1 U.S.C. § 112** which states in pertinent part:

"The Archivist of the United States shall cause to be complied, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress, ... The United States Statutes at Large shall be legal evidence of laws, ..., in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."

IV. **1 U.S.C. § 113** which states in pertinent part:

"The edition of the laws and treaties of the United States, published by Little and Brown, ... shall be competent evidence of the several public and private Acts of Congress, as the case may be, therein contained, in all the courts of law and equity and the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.

V. **28 U.S.C. § 1257** which states in pertinent part:

(a) Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in

question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up of claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

VI. 1929 Act of Congress, Chap 352 @ 1326, **S.3936, (45 St. 1339), Public No. 831,** dated 2/29/29; 1930 & 1931 Clarifying Amendments to 1929 Act of Congress, **HR 12169**, and corresponding House Report No. 2432, dates of 5/5/30; 1/28/31 & 1/30/31 respectively. Attached in Appendix Exhibit A7.

VII. **Herbalist Charter**, 34 & 35 Henry VIII,C.8 (1542-1543). Cited in **HR 12169** and attached in Appendix Exhibit A8.

VIII. **20 CFR § 404.1513. Medical evidence of your impairment.** (Excerpt as follows and attached in Appendix Exhibit A10.)

(e) Information from other sources

(3) other practitioners (for example, **naturopaths**, chiropractors, audiologists, etc.) (emphasis added)

IX. **26 CFR § 1.1402(c)-6(a)(2) & (c)** attached in Appendix Exhibit A11.

X. **NRS 630.020. "Practice of medicine" defined.** (attached in Appendix Exhibit Al2)

XI. State of Nevada, Official Opinions of the Attorney General, **AGO 195** of 11/5/75. (Excerpt as follows and attached in Appendix Exhibit A13.)

> "Term 'practice of medicine,' as defined by NRS 630.020, includes **practice of naturopathy**. Imposition of requirements of NRS ch. 630 on naturopathic physicians did not violate constitutional rights of due process and equal protection of laws." (emphasis added)

RULE 29.4(b) & (c) STATEMENTS

With respect to Rule 29.4(b) the following notice is given. In this matter, as an Act of Congress is called in to question, 28 U.S.C. § 2403(a) may apply and accordingly, a copy of this document is being served on the Solicitor General of the United States, Room 5614, Department of Justice, 10th St. & Constitution Ave., N.W., Washington, DC 20530. It should be further noted that NO notice of this fact was ever certified from the state courts to the Solicitor General.

With respect to Rule 29.4(c) the following notice is given. In this matter, as an Act of Congress is called in to question, 28 U.S.C. § 2403(b) may apply and accordingly, a copy of this document is being served on the Attorney General for the State of Nevada, Heroes Memorial Building, Capitol Complex, Carson City, NV 89710. It should be further noted that at all stages of the state court proceedings, the Attorney General was notified by both Petitioner and said state courts.

STATEMENT OF THE FACTS/CASE

Petitioner, BENJAMIN P. ZVENIA, N.M.D., enjoyed the right to practice the profession of naturopathy/naturopathic healing from July of 1982 through approximately April of 1989 under a properly issued Nevada State License by the Nevada Board of Naturopathic Healing under former NRS 633A et seq. (Appendix Exhibit A14). Petitioner also enjoyed his practice of naturopathy under as Act of Congress (Chap. 352 @ 1326, Public No. 831, approved February 27, 1929) found in the U.S. Statutes at Large (45 St. 1339) and a clarifying

amendment of 1931. Through this Act of Congress, the *naturopathic profession became further* codified in provision of both 20 C.F.R. and 26 C.F.R.. Further, this profession has been federally defined as one separate and distinct from the practice of medicine (allopathy) as codified with the U.S. Department of Labor since 1939 (Appendix Exhibit A9). Also, the Naturopathic practitioner rights have their genesis founded in common law lex scripta codification cited in the 1931 clarifying amendment to the 1929 Act of Congress (Appendix Exhibits A7 & A8).

Petitioner practiced in offices in Las Vegas, and worked for the State Industrial Insurance System as an independent medical examiner based upon his naturopathic license (Appendix Exhibit A14).

The State of Nevada in repealed the naturopathic licensing statutes, NRS 633A et seq., without any notice to those possibly affected thereby, ie., the licensed naturopaths. The repeal of the above statute purported to take away Petitioner's license to practice naturopathy/naturopathic healing without procedural or

substantive due process. This has resulted in a loss of liberty, property, professional recognition and financial wealth, since Petitioner has not only been prohibited by the Respondent from practicing naturopathy, but was also criminally prosecuted and convicted of essentially the same activity for which he had held a valid state license.

Before or during the time that the State of Nevada passed AB 437, Chapter 542 - Statutes of the State of Nevada 1987, which repealed, revoked and expired all licensed issued by the Board of Naturopathic Healing, as well as the Board itself, at NO time ever did Petitioner receive any form of Notice of such potential action. Petitioner was never notified of any hearings that were held on this matter. AT the time, Petitioner was out of the State of Nevada on Military Duty with the U.S. Army, Medical Service Corp. assigned to the 176th Medical Group, AFRC, Los Alamitos, CA and co-attached for ADT/IRR purposes to WOMAC Army Hospital, Nursing Education Dept., Ft. Bragg, NC via the Academy of Health Sciences, Ft. Sam Houston, TX. (Appendix Exhibit A16)

In fact, the State Legislative Council Bureau **did not** notify the out-of-state licensees, of which Petitioner was a member, and instead merely advertised in the classified legal section in Nevada newspapers only of what was taking place. Thus, Petitioner could not have had any notice in this regard based upon the fact that Petitioner was in the service of his country at that time and out of state. (Appendix Exhibit A16).

Petitioner returned to practice in Las Vegas, NV in December of 1987 and was told by both County and State Licensing entities that while the Board of Naturopathic Healing was technically repealed, Petitioner **could** continue to practice naturopathy based upon a pending federal court case, ***Golinski, et al. v. Bryan, et al.***, Docket No. CV-87-337-BRT (Appendix Exhibit A15), where a temporary restraining order (T.R.O.) had been issued allowing naturopathic practitioners to continuing practing their profession. Further, that T.R.O. and the fact of Petitioner being licensed under 633A et seq. gave rise to Petitioner receiving both his Clark County and City of Las Vegas

Business Licenses, as well as validily renewing same through the year 1990 (Appendix Exhibit A14).

Petitioner based upon above, in 1987, duly opened up his medical practice first located at 3163 S. Eastern Ave., LV, NV 89109 in conjunction with three (3) other physicians licensed pursuant to NRS 630. Though this locale proved to be too small for all physicians concerned, so Petitioner moved into a rent share arrangement with another allopathic physician located now at 501 S. Rancho, Ste. A-5, LV, NV 89106. Further, that Petitioner based upon state naturopathic license and valid local licensing became a referred to independent medical examiner for the State Industrial Insurance System and built a successful medical practice in the six figure range.

Thus, Petitioner has shown at all times and will still continue to show that same enjoyed the right to practice said profession of Naturopathy/Naturopathic Healing from July of 1982 to April 1989 as Petitioner **was** licensed by the Board of Naturopathic Healing. That the revocation of N.R.S. 633A et seq. with passage of Assembly Bill (AB)

438 in June of 1987 (Appendix Exhibit A17) has resulted in a loss of liberty, property, professional recognition and financial wealth. Not to mention, the loss of beneficial profession of the healing arts to the citizens of Nevada.

That Petitioner through personal knowledge NOW knows and deeply believes that Nevada did not take the time to understand or learn the history of Petitioner's profession. For if they did, then the law (ie., Acts of Congress, federal preemption doctrine, common law lex scripta codification and interaction between state law and federal agency law) as relied on and proffered by Petitioner would have been known and NOT interfered with. Nor, would Petitioner have lost life, liberty, property and the pursuit of happiness which has occurred in this matter.

Therefore based upon the above, Respondent COULD NOT have abrogated Petitioner's profession/board, nor subsume said profession under the broad and promulgated definition of "practice of medicine" where an old relied upon AGO (ie., **AGO 195** of 1975) (Appendix Exhibit A13) is NOW used to deny licensing unless first

trained as an allopathic physician. Thus, the resulting created situation gives rise to continued facts being in dispute whereby a State Agency is still continuing to violate federal law/ congressional intent, federal agency law, & constitutional rights to be protected at all times by state law by Court intervention.

That from the very beginning of the matter as asserted above, Petitioner brought forth in a timely manner by way of filed court documents, ie. Motion Seeking Declaratory Judgement and Judicial Notice, the fact that this matter involved an Act of Congress and significant constitutional rights of due process and equal protection of the laws, as well as codified common law that is lex scripta cited in the Congressional Legislation with the Act of Congress in both the initial Justice Court and latter District Court proceedings . As this matter further progressed in the state court system, Petitioner again in a timely manner before the District Court raise the controlling Act of Congress, Congressional Intent and cited common law, Federal Preemption, codified federal agency law and

Petitioner's Constitutional rights. Further, Petitioner filed a Writ of Prohibition to the Nevada Supreme Court on the above issues as well as laced their Appeal process with said issues. Petitioner asserts that this great court will find and completely noted all attempts at illuminating the federal issues and questions applicable in this matter.

Accordingly, this great court's judicial discretion is petitioned for with Petitioner's writ in order to decide the constitutional questions of law raised timely and at all stages in this matter which involve an Act of Congress, its clarifying amendment, cited federal common law, corresponding codified federal agency law, doctrine of implied federal preemption and valuable constitutional rights the protect one's right to life, liberty, and pursuit of happiniess, as well as due process and equal protection of the laws.

REASONS FOR GRANTING THE WRIT

I.

THE STATE OF NEVADA DOES NOT HAVE THE AUTHORITY TO LEGISLATE OUT OF EXISTENCE A FEDERALLY DEFINED AND RECOGNIZED THE

HEALING ARTS PROFESSION KNOWN , NOR SUBSUME SAID PROFESSION UNDER ITS BROAD MEDICAL PRACTICE ACT

It is a matter of record & fact that the State of Nevada **did** recognize and license Petitioner and Petitioner's profession. That said State later in 1987 decided to legislate out of existence Petitioner's profession without realizing, researching or acknowledging the material fact that Petitioner's professional right to exist legally was protected by **both** common law and the doctrine of federal preemption. Nor, was it legal for the State after abrogating Petitioner's profession to subsume same under the broad definition of the practice of medicine in the medical practices act found at **N.R.S. 630.020** in the annotation section in a resurrected Attorney General Opinion of 1975 - **AGO 195** (Appendix Exhibit A13, infra.) which states:

> "Term 'practice of medicine,' as defined by NRS 630.020, includes **practice of naturopathy**. Imposition of requirements of NRS ch. 630 on naturopathic physicians did not violate constitutional rights of due process and equal protection of laws." AGO 195 (11-5-75) (emphasis added).

That Petitioner's profession in addition to being protected by the Constitution is duly recognized, defined and clarified in Congressional Legislation (ie., valid Act of Congress) and codified in the U.S. Statutes at Large (see, 1929 Act of Congress codified as Chap 352 @ 1326, **S.3936, {45 St. 1339}, Public No. 831** dated February 27, 1929 and the 1930 & 1931 Clarifying Amendments to the 1929 Act of Congress, **H.R. 12169**, dates of May 5, 1930; January 31, 1931 and January 30, 1931.) Also, by reviewing the Congressional Legislation found as **HR 12169** (Appendix Exhibit A7), the genesis of Petitioner's profession is found and historically traced back to the ***Herbalist Charter***, *34 & 35 Hen. VIII, C.8 (1542)* (Appendix Exhibit A8) which is valid federal common law. Additionally, the State of Nevada has declared valid and binding on the State **all** Henrician Statutes which this is, found in ***Hamilton, et al. v. Kneeland, et al.***, 1 Nev. 40 (1865) where *32 Henry VIII, C.34* was declared to be valid law - "as in adopting the common law of England in this country, it seems to be the established doctrine that it is

adopted as amended or altered by English Statutes in force at the time of emigration of our colonial ancestors." With the existence of common law (found as lex scripta) for naturopathic physicians (modern day herbalists) to practice said profession within the State of Nevada **prior** to the enacting of the Naturopathic Healing Statues, NRS 633A in 1981, said right was **always** present and viable. Consequently, with the enactment of the 1929 Act of Congress and associated federal codification that occurred regarding the naturopathic profession which still is in place today, creates the reality that, the State of Nevada should not have been able to effectively legislate out of existence Petitioner's profession. It should also be noted that **nowhere** in the Medical (allopathic) Practice Act [NRS 630 et seq.] is there an express statement or judicial pronouncement that the practice of naturopathy is encompassed or subsumed within the Medical (Allopathic) Practice Act except through an attorney general opinion, AGO 195 (11/5/75) which is the authority that has been used. Additionally, it is commonly accepted that "the mere

repeal of a law does not destroy acts done or rights acquired under the law during its existence." ***Ware v. Hylton***, 3 Dall. 199, 1 L.Ed. 568 (1796). "The repeal of a statute does not affect rights already acquired under it." ***Society for Propagation of Gospel v. New Haven***, 8 Wheat. 464, 5 L.Ed. 662 (1862). "A repealed act of legislation must be considered, except as to transgressions past and closed, as if it never existed." ***Ex parte McCardle***, 7 Wall. 506, 19 L.Ed. 264 (1896). "The repeal of a statute restores the law as it was before its passage, unless the language of the repealing statute or some general statute provides otherwise." ***United States v. Philibrick***, 7 S.Ct. 413, 120 U.S. 52, 30 L.Ed. 559 (1887). Therefore, even with the repeal of NRS 633A in 1987, the Petitioner would argue the he did not lose the right to practice his profession based upon preexisting federal common law found as the ***Herbalist Charter***, *34 & 35 Henry VIII, C.8 (1542)* which is recognized in the clarifying amendment to the 1929 Act of Congress - **HR12169**. (Appendix Exhibits A7 & A8).

II.

THE RIGHT TO FOLLOW A RECOGNIZED AND LEGITIMATE OCCUPATION IS A RIGHT PROTECTED BY THE CONSTITUTIONAL GUARANTEE OF LIBERTY.

As the court is aware, it is well-established that "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Due Process Clause of the Constitution." ***District of Columbia v. Douglas***, 452 A.2d 329 (D.C.App.1982) citing ***Greene v. McElory***, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411, 3 L.Ed.2d 1377 (1959). See also, ***Leis v. Flynt***, 439 U.S. 438, 452 n.17, 99 S.Ct. 698, 706 n.17, 58 L.Ed.2d 717 (1979) (Stevens, J., dissenting); ***Willner v. Committee on Character and Fitness***, 373 U.S. 96, 102-103, 83 S.Ct. 1175, 1179-1180, 10 L.Ed.2d 224 (1963); ***Schware v. Board of Bar Examiners***, 353 U.S. 232, 238-239, 77 S.Ct. 752, 755-756, 1 L.Ed.2d 796 (1957). Also, ***State v. Smith***, 327 P.2d 938 (1959) and ***State v. Armstrong***, 225 P. 491 (1923).

That as Petitioner's profession is duly recognized,

defined and clarified in Congressional Legislation and codified in the U.S. Statutes at Large , Petitioner avers that he has a significant liberty and property interest in obtaining a restoration of his rights which includes licensing or reinstatement of same to practice naturopathy/ naturopathic medicine by way of judicial pronouncement. Further, this matter is not one where Petitioner is attempting to try to create the situation of the licensing of a new profession, rather the correcting of a situation that is unconstitutional and harmonizing this matter to controlling federal law. Please note that the State of Nevada **did** recognize and license this time honored profession and Petitioner met the requirements imposed by the State of Nevada for licensure, which included education and training, as well as applying for and sitting for and passing a State Board examination. Petitioner never thought that the State of Nevada would approximately eight plus years later take Petitioner's medical license and property right away without complying with all applicable laws including due process and equal protection. "A medical license is

property and the property comprising a professional license includes not only the right to practice the profession, but the right to have due process followed if taken away." ***Mishler v. Nevada State Bd. of Medical Examiners***, 896 F.2d 408 (9th Cir. 1988). Further, the practice of naturopathy is not the practice of medicine and to place said class of practitioners in this medical designation and to impose on naturopathic practitioner the same requirements to be ~~m~~edical doctors (allopaths) to now practice naturopathy is not legal nor rational in light of the controlling applicable law. Further, this specific situation has been held the same with respect to the professions of osteopathy, podiatry (fka chiropody), optometry and chiropractic. Accordingly, Petitioner avers that he has a significant liberty and property interest in obtaining a restoration of his rights.

III.

THAT WITH THE ENACTING OF THE 1929 ACT OF CONGRESS AND CLARIFYING AMENDMENT IN 1931, AS WELL AS CONTROLLING FEDERAL AGENCY LAW, CREATED THE OBLIGATION THROUGH THE DOCTRINE OF IMPLIED PREEMPTION FOR

THE STATE OF NEVADA TO RECOGNIZE AND DEVELOP REGULATORY GUIDELINES FOR THE PRACTICE OF NATUROPATHY

Petitioner submits that the repeal of NRS 633A did give Petitioner the right to practice Naturopathy/ Naturopathic Medicine under both common law via the ***Herbalist Charter, 34 & 35 Henry VIII, C.8 (1542-1543)*** and the doctrine of implied federal preemption. Further, that the law enforced on Petitioner under the so-called lawful guise of the medical practices act (ie., **N.R.S. 630 et seq.**) after the 1987 abrogation of Petitioner's Professional Board - Board of Naturopathic Healing found formerly codified as **N.R.S. 633A et seq.** (Appendix Exhibit A17) violated all known laws and rules that govern the laws and principles of liberty and due process as found in both the U.S. and Nevada Constitution's.

That the entire stated state statute section **NRS 630.020** with promulgated definition found as **AGO 195**, directly violates underlying and controlling U.S. Congressional Legislation which states that the "practice of

naturopathy" IS NOT the "practice of medicine" and that Nevada's statute position **does** violate the constitutional rights of due process and equal protection of the laws, as well as violate the cardinal principle of "federal preemption" which at all times is relevant and binding in this matter and found at **1 U.S.C. §§ 112 & 113** respectively. Just because Respondent, the State of Nevada, was never fully informed or aware of the facts underlining the profession of naturopathy **does not** grant them absolution from this matter for at all times Respondent is responsible for the condition that currently exists and should be held accountable for allowing this matter to exist in the first place.

Additionally, as Petitioner's profession pursuant to the Congressional Legislation is further codified in multiple federal agency laws found at **20 CFR § 404.1513(e)(3)** which states:

> **20 CFR § 404.1513. Medical evidence of your impairment.** (Excerpt as follows and attached in Appendix, Exhibit A10)
>
> (e) Information from other sources

(3) other practitioners (for example, **naturopaths**, chiropractors, audiologists, etc.) (emphasis added)

and,

26 CFR § 1.1402(c)-6 (Appendix Exhibit A11)

which states:

§ 1.1402(c)-6 Members of certain professions.

(c) Meaning of terms. "The designations in this section are to be given their commonly accepted meanings. For taxable years ending after 1955, an individual who is a doctor of osteopathy, and who is not a doctor of medicine within the commonly accepted meaning of that term, is deemed, for purposes of t his section, **not to be engaged in carrying on a trade or business in the exercise of the profession of doctor of medicine**." (emphasis added)

Further, when one substitutes the term "naturopath" as recognized in this whole section then the reality comes to light that one who is a doctor of naturopathy and who is not a doctor of medicine is deemed to not be carrying on in the trade or business of medicine, but that of only naturopathy if practicing to the commonly accepted meaning of the term naturopathy. Also, as Petitioner's profession has been

continually listed as a separate and distinct profession since 1939 with the U.S. Department of Labor (found as **#079.101-014** , see Appendix Exhibit A9) then this matter encompasses the doctrine of implied federal preemption which should have applied at all times in this matter. Therefore, Petitioner would aver that state law as currently enforced since the repeal of NRS 633A directly interferes with the doctrine of impled federal preemption as found through Congressional Intent for the profession of naturopathy, Petitioner's profession, and the resulting federal agency law which authorizes and defines **naturopathy & naturopathic practitioners** as separate and distinct health care providers with these federal agencies.

IV.

SO FAR AS THE PROTECTION OF THE PUBLIC HEALTH IS CONCERNED, UNDER A VALID EXERCISE OF POLICE POWER, THE STATE OF NEVADA COULD NOT LEGALLY PERMIT ONE CLASS OF HEALING ARTS PRACTITIONERS TO PRACTICE WHILE PROHIBITING ANOTHER CLASS OF FEDERALLY DEFINED AND PRACTITIONERS WHO ARE EQUALLY TRAINED AND QUALIFIED FROM DOING THE SAME OR EQUIVALENTFUNCTION.

To hold then or assume that the Legislature had meant to permit only one class of practitioners to do certain things, while prohibiting another class of practitioners which are equally qualified, so far as the protection of public health is concerned from doing the same thing is not within the power of the state. "Such a law would not go far enough to amount to police regulation. It would be merely giving a certain class of practitioners a monopoly of the trade." ***State v. Borah***, 76 P.2d 757, 51 Ariz. 318; ***State v. Childs***, 257 P. 366, 369, 32 Ariz. 222, 54 ALR 736; ***State v. Donaldson***, 42 N.W. 781, 41 Minn. 74. Further, "it is at least settled, if it is apparent on the face of the act, that its provisions from their very nature, cannot and will not conduce to any legitimate police purpose, it is the right and duty of the Court to pronounce it invalid, as in excess of legitimate power and an arbitrary and unwarranted interference with the right of the citizen to pursue any lawful occupation. ***State v. Borah***, 76 P.2d 757, 51 Ariz. 316. Thus, Petitioner would reassert that the above situation exists in this matter and ask to court to see the following

additional cite:

> "...the State in undertaking its obligation to protect the public must adopt those means which trench least on fundamental private rights, including the right to practice one's profession." ***England v. Louisiana State Board of Medical Examiners***, 246 F.Supp. 993 (1965).

Accordingly, the profession of Naturopathy is a valid, time honored and lawful occupation. Thus, the right for this profession to exist and be practiced is well within the protections afforded by our constitutional framework (both federal & state). Therefore, to make with the stroke of a State Legislative Pen an enactment that completely abrogates a federally defined and recognized profession, and then subsumes same into another profession in order to prosecute competition is nothing more than blatant discrimination and an abuse of the inherent police power vested to the State.

Also, that Petitioner would submit in this instant matter that same has established constitutional invalidity, as well as other crucial items like; deprivation of a right secured by both the Constitution and /or federal law.

CONCLUSION

Based upon the forgoing presented material, Petitioner avers that he has shown a significant liberty and property interest in obtaining a restoration of his rights which includes licensing or reinstatement of same to practice naturopathy/naturopathic healing as the right for this profession to exist and be practiced is well within the protections afforded by our constitutional framework (both federal & state).

Also, that Petitioner would submit in this instant matter that same has established constitutional invalidity, as well as other crucial items like; deprivation of a right secured by both the Constitution and /or federal law and accordingly, the law and material presented by Petitioner to the state courts should have been heard and acted upon.

///

///

///

///

Therefore, when one looks at all presented material in this writ Petitioner should be entitled as a matter of law to have this matter review by writ of certiorari.

Respectfully submitted this 10th day of August, 1998.

BENJAMIN P. ZVENIA, N.M.D., J.D.
Petitioner "Pro-Per"

1025 Sierra Vista #70
Las Vegas, NV 89109
(702) 731-1675

APPENDIX

APPENDIX

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A1

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN P. ZVENIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 26324

FILED

MAY 14 1998

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, entered pursuant to a plea of nolo contendere, of one count of practicing medicine without a license, a violation of NRS 630.400 and 630.020.[1] In return, the prosecution dismissed two other counts of violating the Professions, Occupations and Businesses Act, two counts of fraudulent possession of a dangerous drug and one count of unlawful dispensing or furnishing of dangerous drugs. Appellant was sentenced to a six-year prison term, fined $2,525 and ordered to make restitution in the amount of $283.

Appellant claims to be a naturopathic physician. In 1987 the Nevada State Legislature repealed NRS 633A to 633A.500

[1]Appellant's counsel filed an affidavit of "no-merit appeal" pursuant to Anders v. California, 386 U.S. 738 (1967) and Sanchez v. State, 85 Nev. 95, 450 P.2d 793 (1969). This court recently overruled Sanchez in Ramos v. State, 113 Nev. ___, 944 P.2d 856 (1997). Because this appeal was filed prior to our decision in Ramos, it does not apply to this appeal.

(1987 Nev. Stat. ch. 542, § 1 at 1236-37), the statutes governing the practice and licensing of naturopaths as physicians in Nevada. However, appellant continued to practice notwithstanding the repeal of the statutes. On appeal, appellant contends that he has a common law right to practice naturopathic medicine. Appellant relies on NRS 1.030[2] and the Herbalist Charter, 34 & 35 Henry VIII, C.8 (1542-1543), a 450 year-old English act authorizing the practice of herbal medicine or naturopathy. Appellant argues that because NRS chapter 633A only regulated but did not originally establish or create naturopathy in Nevada, the application of the common law which authorizes the practice is not repugnant to the laws of this state. Appellant contends that because he was at one point licensed as a naturopath by the State of Nevada, his conviction must be reversed. Appellant's argument is without merit. It is clear from the record that appellant engaged in conduct which is defined as the practice of medicine

---

[2]NRS 1.030 provides as follows:

> The common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United State, or the constitution and laws of this state, shall be the rule of decision in all courts of this state.

by NRS 630.020, that he had no license to do so, and that his conduct was prohibited under NRS 630.400.[3]

Appellant also contends that the repeal of NRS chapter 633A was an unconstitutional taking of his property. This court expressly considered and rejected this argument in appellant's proper person petition for a writ of prohibition. Zvenia v. State Assembly, Docket No. 26901 (Order Denying Petition, August 20, 1996). See Ottenheimer v. Real Estate Division, 97 Nev. 314, 629 P.2d 1203 (1981); Koscot Interplanetary, Inc. v. Draney, 90 Nev. 450, 456, 530 P.2d 108, 112 (1974).

---

[3]NRS 630.020 defines the "practice of medicine" as follows:

> 1. To diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality.
> 2. To apply principles or techniques of medical science in the diagnosis or the prevention of any such condition.
> 3. To perform any of the acts described in subsections 1 and 2 by using equipment that transfers information concerning the medical condition of the patient electronically, telephonically or by fiber optics.
> 4. To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections 1 and 2.
> 5. To use in connection with a person's name the words or letters "M.D.," or any other title, word, letter or other designation intended to imply or designate him as a practitioner of medicine in any of its branches, except in the manner authorized by NRS 630A.220.

Appellant's other contentions regarding events which occurred prior to the entry of his plea are also without merit. See Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). Accordingly, we

ORDER this appeal dismissed.

Springer, C.J.

Shearing, J.

Rose, J.

Young, J.

Maupin, J.

cc: Hon. Sally L. Loehrer, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Stewart L. Bell, District Attorney
Patricia M. Erickson
Benjamin P. Zvenia
Loretta Bowman, Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN P. ZVENIA,

Petitioner,

vs.

THE STATE OF NEVADA ASSEMBLY, AND THE ATTORNEY GENERAL OF NEVADA,

Respondent.

No. 26901

FILED

AUG 20 1996

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

FOR WRIT OF PROHIBITION

This proper person petition for a writ of prohibition seeks an order from this court preventing the Nevada State Assembly from abolishing the Nevada statutes governing the practice of naturopathic medicine. Petitioner contends that the decision of the Nevada State Assembly in 1987 to repeal the statutes governing the practice of naturopathy (NRS 633A.010 through 633A.500) constituted a taking of his property without due process of law.

We have reviewed the documents on file with this court and we conclude that our intervention by extraordinary writ is not warranted. Specifically, the legislature "is free to enact any law provided it is not clearly prohibited by some provision of the Constitution of the United States or the Nevada Constitution. Whether a legislative enactment is wise or unwise is not a determination to be made by the judicial branch." Koscott Interplanetary, Inc. v. Draney, 90 Nev. 450, 456, 530 P.2d 102, 112 (1974). Further "even a legitimate occupation may be restricted or prohibited in the public interest." Id. (citations omitted).

Finally, where a constitutional challenge to a statute is made, the burden is on the challenger to make a "clear showing" of the statute's invalidity. Ottenheimer v. Real Estate Division,

97 Nev. 314, 629 P.2d 1203 (1981). We conclude that petitioner has not demonstrated the constitutional invalidity of the repeal of NRS chapter 633A.

Accordingly, we deny this petition.

It is so ORDERED.[1]

_____, C.J.

_____, J.

_____, J.

cc: Hon. Frankie Sue Del Papa, Attorney General
Benjamin P. Zvenia

---

[1]Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents. We deny as moot petitioner's motion for leave to proceed in forma pauperis.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN P. ZVENIA,

Petitioner,

vs.

THE STATE OF NEVADA ASSEMBLY, AND THE ATTORNEY GENERAL OF NEVADA,

Respondent.

No. 26901

FILED

DEC 18 1996

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.[1]

Steffen, C.J.

Young, J.

Springer, J.

Shearing, J.

Rose, J.

cc: Hon. Frankie Sue Del Papa, Attorney General
Benjamin P. Zvenia

[1]Although petitioner has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered petitioner's proper person documents.

A4

App 112

REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff
THE STATE OF NEVADA

FILED

Jul 15 9 30 AM '94

CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- BENJAMIN PHILIP ZVENIA aka G. Benjamin Zvenia, #0925646 Defendant.	CASE NO. C99837 DEPT. NO. XV DOCKET NO. L

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 1st day of March, 1994, the Defendant BENJAMIN PHILIP ZVENIA aka G. Benjamin Zvenia, appeared before the Court herein with his counsel and entered a plea of guilty to the crime of COUNT III - PROFESSIONS, OCCUPATIONS AND BUSINESSES, UNLAWFUL ACTS (Felony), committed on or between April 1, 1990 and April 25, 1990, in violation of NRS 630.400, 630.020; and

WHEREAS, thereafter on the 19th day of April, 1994, the Defendant being present in Court with his counsel DAVID N. BUDENSTEIN, ESQUIRE, and CHRIS J. OWENS, Chief Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the $25.00 Administrative Assessment Fee, Defendant

CE-01

JUL 18 1994

CE14

sentenced to six (6) years Nevada Department of Prisons. Defendant entitled to 123 days credit for time served. Defendant to pay a fine in the amount of $2,500.00 and restitution to PATRICIA BRAASCH in the amount of $283.00 and pay a fine in the amount of $25.00.

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 14th day of July, 1994, in the City of Las Vegas, County of Clark, State of Nevada.

DISTRICT JUDGE

DA#91-99837X/srs
LVMPD DR#90-88499; 85374

MINUTE ORDER FOR JUDGMENT OF IMPRISONMENT

STATE OF NEVADA #C925656 CASE NO. C 99837

vs.

Benjamine Philip Zvenica
AKA- G Benjamin Zvenica

On the 19 day of April, 1994, the Honorable Sally Loehrer District Judge of the Eighth Judicial Court of the State of Nevada sentenced the above-named Defendant. The Defendant previously was (~~Found Guilty~~/Plead Guilty) on 1 day of March, 1994, and the sentence of imprisonment in the Nevada State Prison is as follows:

COUNT	OFFENSE	SENTENCE
III	Professions, Occupations, and Businesses, Unlawful Acts (F)	6 yrs.
	Remaining Counts Dismissed.	

with credit for time previously served in the amount of 123 days.

Pursuant to NRS 176.335 the Sheriff of Clark County is instructed to immediately notify the director of the department of prisons and the director shall, without delay, send some authorized person to receive the prisoner for commitment.

LORETTA BOWMAN, County Clerk and Clerk of the Eighth Judicial District Court, in and for the County of Clark, State of Nevada.

By: Cindy Horton, Deputy

$25 assessment fee
$3500 fine
283 restitution

- 131

2-21-94 Surrender.

Office of County Clerk

200 South Third Street
PO Box 551601
Las Vegas NV 89155-1601

LORETTA BOWMAN
County Clerk
Commissioner of Civil Marriages

MARY MOSLEY
Assistant County Clerk

Telephones
Day: 455-3188 • Night: 455-4415
FAX: 455-4828

DATE: MAY 4, 1995

TO: PATRICIA M. ERICKSON

CASE # C99837

DEPT # IV

DEFENDENT BENJAMIN D. ZUFELT

ATTACHED ARE PLEADINGS RECEIVED BY THE OFFICE OF THE COUNTY CLERK ON

MAY 3, 1995.

PLEADINGS MOTION FOR A RULING ON PETITION SEEKING DECLATORY JUDGMENT FILED MARCH14, 1995

LORETTA BOWMAN, COUNTY CLERK

BY: # 37
DEPUTY CLERK

Rule 3.70. Papers Which May Not be Filed.

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to that attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

[redacted]- To permit the clerk to forward to counsel all papers received from a defendant represented by an attorney.

BENJAMIN P. ZVENIA 43136
P.O. BOX 607
CARSON CITY, NEVADA 89702

PETITIONER IN PRO SE

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

BENJAMIN P. ZVENIA,
Petitioner,

-v-

STATE OF NEVADA, et al.,
Respondent.

MOTION FOR A RULING ON PETITION SEEKING DECLARATORY JUDGMENT FILED MARCH 14, 1995 (EXHIBITED)

COMES NOW, Petitioner, BENJAMIN P. ZVENIA, in Pro se and moves the Court for a ruling on his previously filed (March 14, 1995) Petition for a Declaratory Judgment (See filed exhibit attached and un-ruled upon to date).

DATED: 4/24/95

Respectfully submitted,

BENJAMIN P. ZVENIA, Petitioner

Pro. Box 607 Carson City NV 89702

4/24
95 Sent

BENJAMIN PHILIP ZVENIA, N.M.D.
R.R. 2, Box 9000
Safford, AZ 85546
(#25270-048)
IN PROPRIA PERSONA

FILED
Mar 29 3 47 PM '91
JUSTICE COURT
LAS VEGAS NEVADA
BY _____ DEPUTY

STATE OF NEVADA, JUSTICE COURT
LAS VEGAS TOWNSHIP, CLARK COUNTY

BENJAMIN PHILIP ZVENIA, N.M.D.
Plaintiff/Petitioner

v.

STATE OF NEVADA, et al.
Respondant(s)

NO. _____

SUPPLEMENTAL STATEMENT TO MOTION SEEKING DECLARATORY JUDGEMENT (28 USC § 2201)

COMES NOW Plaintiff/Petitioner BENJAMIN PHILIP ZVENIA, N.M.D., In Propria Persona that on my motion before the court, wherefore I cannot obtain nor get to any copy of the Nevada Revised Statutes (N.R.S.); wherefore I adopt in pertinent part, the applicable and protective provisions of the N.R.S. as a part hereof, as set forth fully and at length hereinat, and I adopt the parent pleading/motion entitled Motion Seeking Declaratory Judgement (28 USC § 2201) likewise a part hereof, which makes reference to the said N.R.S. provisions generally.

CAVEAT: "that state courts are as capable as federal courts of determining facts, . . . equally important state courts share with federal courts and equivalent responsibility for the enforcement of federal rights, a responsibility one must expect they will fulfill." Lugo v. Wenzel, D.C.N.Y.1975, 404 F.Supp. 874.

"State courts have concurrent jurisdiction with federal courts to protect constitutionally guaranteed rights." Bateman v. South Carolina State Ports Authority, D.C.S.C.1969, 298 F.supp. 999.

3/27/91
Date

Respectfully submitted,

Benjamin Philip Zvenia, N.M.D.
Plaintiff/Petitioner

RECEIVED
MAR 14 1991
JUSTICE COURT

BENJAMIN PHILIP ZVENIA, N.M.D.
R.R. 2, Box 9000
Safford, AZ 85546
(#25270-048)

IN PROPRIA PERSONA

STATE OF NEVADA, JUSTICE COURT

LAS VEGAS TOWNSHIP, CLARK COUNTY

BENJAMIN PHILIP ZVENIA, N.M.D.
Plaintiff/Petitioner)

v.)

STATE OF NEVADA, et al.
Respondant(s))

No. _____

MOTION SEEKING DECLARATORY JUDGEMENT (28 USC § 2201)

COMES NOW Plaintiff/Petitioner BENJAMIN PHILIP ZVENIA, N.M.D., In Propria Persona, and moves this Honorable COurt to consider Petitioner's Motion Seeking Declaratory Judgement pursuant to 28 U.S.C. § 2201 with Federal Rules of Civil Procedure applying (Rules 1, 57, 38 & 39), for reason that Plaintiff/Petitioner has been unlawfully investigated, indicted, tried, convicted and incarcerated by officers and agents of apparent administrative agencies of the Federal Government of the United States, and further, complaints exist against Plaintiff/Petitioner all which arginate from the State of Nevada's position on Naturopathy/Naturopathic Medicine as being illegal, which is in violation of Article IV, Section 2, Clause 1; Article VI, Clause 2; and Amendments Five & Fourteen of the United States Constitution. Plaintiff/Petitioner hereby demands that the legal wrongs committed by Respondant(s) be immediately corrected by declaratory judgement in favor of plaintiff. See attached memorandum.

CAVEAT: Soverign immunity protection will not hold. See, Monell v. New York City Dept. of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018; and Muskopf v. Corning Hospital, 359 P.2d 457 (Cal.1961).

3/6/91
Date

Respectfully submitted,

Benjamin Philip Zvenia, N.M.D.
Propria Persona

COPY

CASE NO.

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA, Plaintiff,	
vs.	CASE NO. 90F04516X
BENJAMIN ZVENIA, Defendant.	DEPARTMENT NO. 5

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WILLIAM D. JANSEN

JUSTICE OF THE PEACE

MONDAY, MAY 6, 1991

APPEARANCES:

For the State: SYLVIA TEUTON
Deputy District Attorney

For the Defendant: PRO PER

REPORTED BY: KRIS REMAKEL, CSR NO. 85, RPR

LAS VEGAS, NEVADA MAY 6, 1991

P R O C E E D I N G S

THE COURT: Benjamin Zvenia. I think this has been Grand Juried, has it not?

MS. TEUTON: Yes, your Honor.

THE COURT: There is two bails. There is a motion here that you filed.

THE DEFENDANT: Right, your Honor. I filed it.

THE COURT: To reconsider. That's out of my jurisdiction. You are in the jurisdiction of the District Court.

THE DEFENDANT: The question is what happens to the motion, my own motion before the criminal charges were brought forward, under 220 --

THE COURT: That's all transferred to District Court.

THE DEFENDANT: It does transfer?

THE COURT: Yes. Okay?

(Proceedings concluded.)

ATTEST:

FULL, TRUE AND ACCURATE TRANSCRIPTION OF PROCEEDINGS.

Kris Remakel

KRIS REMAKEL, CSR NO. 85, RPR

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN P. ZVENIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 23792

FILED

JAN 28 1993

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an oral order of the district court denying appellant's proper person "request to take judicial notice." No statute or court rule provides for an appeal from an oral order denying a request to take judicial notice. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990). We conclude, therefore, that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal dismissed.[1]

_____, C.J.

_____, J.

_____, J.

cc: Hon. Gerard Bongiovanni, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Ras Bell, District Attorney
Benjamin P. Zvenia
Loretta Bowman, Clerk

[1] Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents. We deny as moot appellant's proper person motions for an extension of time within which to file the record and for a stay of proceedings in the district court pending this appeal.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN P. ZVENIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 23792

FILED

APR 21 1993

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.[1]

Rose, C.J.

Steffen, J.

Young, J.

Springer, J.

Shearing, J.

cc: Hon. Gerard J. Bongiovanni, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney
Benjamin P. Zvenia
Loretta Bowman, Clerk

[1]Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents.

A7

Description.

particularly described as follows, to wit: Beginning at the intersection of the north line of Fifth South Street produced and the west line of Fort Douglas United States Military Reservation, said point being three hundred and ninety-one and forty-eight hundredths feet east and sixty-three and thirty-seven hundredths feet north of the city monument at the intersection of Thirteenth East and Fifth South Streets, thence east one thousand three hundred and twenty feet, thence south one hundred and thirty-one and one hundred feet, thence west one thousand three hundred and twenty feet, thence north one hundred and thirty-one and one hundredth feet to place of beginning: *Provided*, That the city of Salt Lake shall construct and maintain a street thereon, without expense to the United States: *And provided further*, That when said land shall cease to be used and maintained as a street it shall revert back to the United States and the instrument of conveyance shall recite such reversionary condition.

Proviso.
No Federal expense incurred.

Reversion for nonuse.

Approved, February 27, 1929.

February 27, 1929.
[S. 2206.]
[Public, No. 691.]

CHAP. 352.—An Act To regulate the practice of the healing art to protect the public health in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of this Act the following words and phrases have the meanings assigned to them, respectively, except where the context otherwise requires:

Healing Arts Practice Act, D. C., 1929.
Meanings assigned to terms.

"Disease."

(a) "Disease" means any blemish, defect, deformity, infirmity, disorder, disease, or injury of the human body or mind, and pregnancy, and the effects of any of them.

"The healing art."

(b) "The healing art" means the art of detecting or attempting to detect the presence of any disease; of determining or attempting to determine the nature and state of any disease, if present; of preventing, relieving, correcting, or curing, or of attempting to prevent, relieve, correct, or cure any disease; of safeguarding or attempting to safeguard the life of any woman and infant through pregnancy and parturition; and of doing or attempting to do any of the acts enumerated above: *Provided*, That for the purposes of this Act the term "the healing art" does not include—

Proviso.
Exemptions.

Dentistry.

(1) Dentistry as defined in an Act entitled "An Act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto," approved June 6, 1892, as amended by Acts approved June 7, 1924, and March 4, 1927; nor

Vol. 41, p. 306.

Podiatry.
Vol. 41, p. 306.

(2) Podiatry as defined in an Act entitled "An Act to regulate the practice of podiatry in the District of Columbia," approved May 23, 1913; nor

Optometry.
Vol. 43, p. 121.

(3) Optometry as defined in an Act entitled "An Act to regulate the practice of optometry in the District of Columbia," approved May 28, 1924; nor

Pharmacy.
Vol. 34, p. 172. Vol. 43, p. 1412.

(4) Pharmacy as defined in an Act entitled "An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes," approved May 7, 1906, as amended by an Act approved March 4, 1924; nor

Nursing.
Vol. 34, p. 887.

(5) Nursing as defined in an Act entitled "An Act to define the term 'registered nurse' and to provide for the registration of nurses in the District of Columbia," approved February 9, 1907.

"To practice."

(c) "To practice" means to do or to attempt to do, or to hold oneself out or to allow oneself to be held out as ready to do, any act enumerated in subsection (b) of this section as constituting a part

of the healing art, for a fee, gift, or reward, or in anticipation of any fee, gift, or reward, whether tangible or intangible.

"Commission."

(d) "Commission" means the commission on licensure to practice the healing art, created by this Act.

"Board."

(e) "Board" means a board of examiners created by this Act.

"Drugless healing."

(f) "Drugless healing" means any system of healing that does not resort to the use of drugs, medicine, or operative surgery for the prevention, relief, or cure of any disease.

"School."

(g) "School" means any school, college, or university.

Practice without license, or exempt, forbidden.

SEC. 2. No person shall practice the healing art in the District of Columbia who is not (a) licensed so to do, or (b) if exempted from licensure under sections 42 or 43 of this Act, then duly registered.

Post, p. 1338.

Practice otherwise than in accordance with terms thereof forbidden.

SEC. 3. No person shall practice the healing art in the District of Columbia otherwise than in accordance with the terms of his license or of his registration, as the case may be.

Commission on licensure created.

Composition.

SEC. 4. There is hereby created a commission on licensure to practice the healing art in the District of Columbia, consisting of the president of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the United States district attorney for the District of Columbia, the superintendent of public schools of the District of Columbia, and the health officer of the District of Columbia, each ex officio. The commission shall elect a president and a vice president. The health officer shall be the secretary and treasurer of the commission. The commission shall make and from time to time may alter such rules as it deems necessary for the conduct of its business, and for the execution and enforcement of the provisions of this Act. It shall adopt a common seal, and from time to time alter the same as to it seems proper. The courts shall take judicial notice of such seal.

Officers.

Rules to be adopted.

Seal.

General powers.

Record of standards of schools, etc., to be kept.

Registration.

Proviso.
Cases not applicable.

Post, p. 1334.

SEC. 5. The commission shall establish minimum standards of preprofessional and professional education in the healing art and may establish minimum standards for hospitals for interne training. It may determine whether preprofessional and professional schools, and whether hospitals, attain such standards. It shall keep a record of its investigations and determinations with respect to all schools and hospitals and shall approve and enter in a proper register every school and every hospital attaining the prescribed standard or which had attained such standard during its existence. The commission may redetermine from time to time the standing of any school or hospital and may revise its register accordingly. The commission shall give no credit for any certificate, diploma, or degree emanating from any school, and it may refuse to give any credit for any certificate or diploma emanating from any hospital, not duly registered as provided by this Act: *Provided*, That this requirement as to registration shall not apply in the case of persons applying for license on years of practice under the provisions of section 24 of this Act.

Consideration of applications for license and registration.

Issue by virtue of outstanding license to practice, etc.

SEC. 6. The commission shall receive, number consecutively, and record all applications presented in due form for licenses and for registration; but such applications may be classified according to their respective purposes, and numbered consecutively and registered according to the several classes thus established. If the commission finds that an applicant is entitled to a license by virtue of an outstanding license to practice medicine and surgery in the District of Columbia or by virtue of years of practice, under the provisions of section 24 of this Act, or by virtue of reciprocity, under the provisions of section 25, it shall issue to him a license accordingly. If the commission finds that an applicant has submitted satisfactory proof of age, moral character, preprofessional education, professional education, and, if required by the commission, of

Examination subject to determination of professional fitness.

Post, p. 1334.
On favorable report of examining board, license to issue.

hospital training, but must be subjected to an examination to determine his professional fitness, under section 26, it shall certify him to the proper examining board for that purpose; and upon receipt of a report from any such board, satisfactory to the commission, showing that the applicant has passed such an examination, the commission, being of the opinion that the applicant is in all other respects legally qualified, shall issue to him a license to practice the healing art in the manner described in his application and as authorized by law, in whatever class the commission shall find him qualified to so practice.

Officers and employees authorized.

SEC. 7. The commission may (a) appoint, suspend, and remove such examiners, counsel, clerks, inspectors, and other officers and employees as may be authorized by law; (b) enter into contracts for the use and occupancy of such quarters as may be necessary for its purposes; but the Commissioners of the District of Columbia are hereby authorized to furnish such quarters without cost to the commission if the necessary space is available in any building under their control; and (c) buy such supplies as may be necessary for its work and for the execution and enforcement of this Act: *Provided*, That the commission incurs no indebtedness in excess of money actually available.

Contracts for quarters.

Purchase of supplies.

Proviso.
Indebtedness limited.

Boards of examiners to be appointed.

SEC. 8. The commission shall appoint boards of examiners as follows: (a) A board of examiners in the basic sciences; (b) a board of examiners in medicine and osteopathy; (c) a board of examiners in chiropractic; and (d) a board of examiners in naturopathy. The commission shall appoint (e) a board of examiners in midwifery; and (f) such other boards of examiners in drugless healing as are necessary under the provisions of this Act. The board of examiners in the basic sciences, and the board of examiners in medicine and osteopathy, shall each consist of five members. Boards of examiners in midwifery and boards of examiners in drugless healing may consist of three to five members, as the commission deems proper. No examiner shall be appointed for a term longer than five years, and all appointments shall be made so that the term of one member of each board shall expire on the 31st day of December of each year. The commission shall appoint no person as a member of any such board who is not a citizen of the United States and who has not been a resident of the District of Columbia for at least three years immediately preceding his appointment. The commission may appoint as members of such boards persons employed in the service of the Federal Government and of the government of the District of Columbia; and persons so employed may accept such appointment and may receive such compensation for their services as examiners as may be provided by law and by the regulations of the commission. A member of any board is not debarred by such membership from employment under the Federal Government or the government of the District of Columbia, not inconsistent with the discharge of his duties as a member of such board.

Membership.

Terms.

Citizenship and residence required.

Government employees eligible.

Duties, etc., of examining boards.

SEC. 9. Each examining board shall elect a chairman and a secretary and may make such rules regarding the discharge of its duties as the commission may approve. Each board shall conduct examinations and make reports as required by law and by the rules of the commission.

Board of examiners in basic sciences.

Qualifications.

SEC. 10. The commission shall appoint the several members of the board of examiners in the basic sciences so that there will be on said board at all times one or more members capable of determining whether applicants have or have not a sufficient knowledge of the sciences of anatomy, physiology, chemistry, bacteriology, and pathology to enable such applicants to understand and to apply such sciences in the study and practice of the healing art. No member

the District of Columbia, or by the major and superintendent of police of this District; but no such proceeding shall be entertained in advance of the conviction of the person sought to be enjoined, of violation of the provisions of this Act. In any such proceeding it shall not be necessary to show that any person is individually injured by the act or acts complained of. No injunction, either temporary or permanent, shall be granted until after final trial and final judgment on the merits of the case, nor until after a hearing is had on the petition. If on the trial it is shown that the respondent has been unlawfully practicing the healing art the court shall perpetually enjoin him from so practicing or continuing to practice, unless and until he has been duly licensed so to do. Procedure in such cases shall be the same as in any other injunction suit, as nearly as may be. The remedy by injunction given hereby is in addition to criminal prosecution and punishment based thereon, and not in lieu thereof. Such cases shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate court, in the same manner and under the same law and regulations as apply to other suits for injunction.

Issued only after final judgment on merits of the case.

Procedure.

Remedy additional to criminal prosecution, etc.

SEC. 42. The provisions of this Act forbidding the practice of the healing art without a license shall not apply (a) to commissioned surgeons of the United States Army, Navy, or Public Health Service, or to medical officers in any other branch of the Federal Government whatsoever, in the discharge of their official duties; nor (b) to practitioners of the healing art duly licensed to practice their respective callings in States or Territories, or in jurisdictions under the control of the Federal Government, or in foreign countries, and actually called from such States, Territories, jurisdictions, or countries, in consultation, to visit specified patients in the District of Columbia or to give demonstrations or clinics under the auspices and for the members of an incorporated organization made up of licensed practitioners of the healing art in the District of Columbia; nor (c) to practitioners licensed to practice their respective callings in States and Territories, and in other jurisdictions forming a part of the United States, or in foreign countries, and called from such States, Territories, jurisdictions, or countries to visit, on their own behalf and not in consultation, specified patients in the District of Columbia: *Provided*, That all practitioners claiming exemption under the provisions of this section, except those called into the District of Columbia on consultations only, shall file with the commission, in such manner as the commission may prescribe, evidence of their right to such exemption. Upon proof of that right, to the satisfaction of the commission, the commission shall enter the name of the applicant in a register kept for that purpose and shall issue to the applicant a certificate in evidence of such registration.

License requirements not applicable. Government employees, etc.

Practitioners under State, etc., licenses, coming in consultation.

Outside practitioners visiting enrolled District patients.

Proviso. Evidence of right to exemption to be filed.

Register and certificate.

SEC. 43. The provisions of this Act shall not be construed to apply to (a) the treatment of any case of actual emergency; or (b) to the practice of massage, or dietetics, or the use of hygienic measures, for the relief of disease or to the practice of any other form of physiotherapy for the relief of disease, or to the practice of X-ray or laboratory technicians, under the direction of a person licensed to practice the healing art in the District of Columbia: *Provided*, That clinical and radiographic laboratories in operation and practitioners of clysterory treatment, within the District of Columbia January 1, 1929, may continue to so operate under the provisions of this Act; or (c) to the use of ordinary hygienic, dietetic, or domestic remedies: *Provided*, That such use is not in violation of the provisions of sections 1 and 2 of this Act; or (d) to persons treating human ailments by prayer or spiritual means, as an exercise or enjoyment of

Treatments exempt from provisions of Act.

Proviso. Laboratories of clysterory practitioners.

Use of domestic remedies. Exception.

Use of prayer, etc.

Not violated communicable diseases, etc., quarantine, etc. Sale of medicines.

religious freedom: *Provided*, That the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated; or (e) to the sale, manufacture, or advertising of drugs and medicines: *Provided*, That the vendor, maker, or advertiser, refrains from any attempt to diagnose: *Provided*, That it shall not be necessary to negative any of the aforesaid exemptions in any prosecution brought under this Act, but the burden of proof of any such exemption shall be on the defendant.

Conditions.

Burden of proof of exemptions on defendant.

Money received to be deposited as a special fund.

Payment from, for all expenses, except of criminal prosecutions.

SEC. 44. All money payable under the provisions of this Act shall be paid to the collector of taxes of the District of Columbia and be by him deposited as a special fund to the credit of the commission. The commission shall pay from such fund all of the expenses of carrying this Act into effect, except such as may be incident to criminal prosecutions and to supervision and investigation with a view to criminal prosecution, the cost of which shall be paid from appropriations in the same manner as the expenses of other criminal prosecutions and supervisory work and investigations incident thereto are paid. Payments by the commission shall be made by check, signed by the president and treasurer of the commission. Members of the several examining boards and all officers and employees of the commission shall be paid at such rates as the commission deems proper.

Present medical boards to deliver records, etc., to Commission on Licensure to Practice the Healing Art.

Board of Medical Supervisors to transfer balances to commission.

Use for expenses of this Act.

SEC. 45. As soon as practicable after the approval of this Act the Board of Medical Supervisors of the District of Columbia, the Board of Medical Examiners of said District, the Board of Homeopathic Medical Examiners, and the Board of Electric Medical Examiners shall deliver to the Commission on Licensure to Practice the Healing Art in the District of Columbia all records and property in their possession, respectively. The Board of Medical Supervisors of the District of Columbia shall transfer to said commission all money remaining to the credit of said board after the payment in full of all outstanding obligations against it; and the money so transferred may be used by the commission to defray the expenses of carrying this Act into effect in the same manner as other money coming into the custody of the commission is used for that purpose.

Enforcement provisions.

Criminal prosecutions.

Suspension of license, and injunctions.

SEC. 46. It shall be the duty of the Commissioners of the District of Columbia and of the major and superintendent of police of said District to enforce the provisions of this Act. Criminal prosecution shall be conducted by the United States district attorney for the District of Columbia. Proceedings looking toward the suspension or revocation of licenses or registration and toward the issue of injunctions, under the provisions of this Act, shall be conducted by said United States district attorney when instituted on behalf of the commission, and by the corporation counsel for the District of Columbia when instituted on behalf of the commissioners of said District or by the major and superintendent of police of said District.

Annual report, etc.

SEC. 47. The commission shall report annually to Congress, on the first Monday in December, its proceedings under the provisions of this Act during the next preceding fiscal year, with recommendations for such further legislation as may be necessary to protect the people of the District of Columbia from ignorance and quackery in the practice of the healing art in said District.

Title of Act.

SEC. 48. This Act may be cited as the "Healing Arts Practice Act, District of Columbia, 1928."

Disposition of matters pending before Board of Medical Supervisors.

SEC. 49. Matters pending before the Board of Medical Supervisors of the District of Columbia at the time of the approval of this Act shall be disposed of by the commission in accordance with the provisions of this Act, unless in the judgment of the commission it would be unjust or oppressive so to do; any matter, which in

the judgment of the commission, it would be unjust or oppressive so to dispose of, may be disposed of by the commission, in so far as may be practicable, in accordance with the provisions of the law in force when the matter first came before the Board of Medical Supervisors. Criminal prosecutions may be instituted and, if instituted at the time of the approval of this Act, may be continued, and penalties may be imposed, under the provisions of the law in force at the time of the alleged offense, notwithstanding the passage of this Act. Except as provided above, all laws contrary to this Act or inconsistent therewith are hereby repealed.

Criminal prosecutions.

Inconsistent laws repealed.

Approved, February 27, 1929.

CHAP. 353.—An Act Authorizing the use of certain land owned by the United States in the District of Columbia for street purposes.

February 27, 1929.
[S. 4567.]
[Public, No. 852.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia be, and they are hereby, authorized to use for street purposes one thousand six hundred and fifty-one square feet of a tract of land known as parcel 17/93, seven hundred and eight square feet of a tract of land known as parcel 18/52, and three hundred and eighty square feet of a tract of land known as parcel 18/23, all for the widening of Reservoir Road, and to use for street purposes twenty-three thousand seven hundred and seventy-nine and sixty-three one-hundredths square feet of a tract of land known as parcel 28/12 for the widening of Reservoir Road and Forty-fourth Street; and to use for street purposes a strip of land sixty feet wide containing two hundred and fifty-eight thousand seven hundred and fifty square feet, more or less, lying immediately northeasterly of the southwesterly boundary of a tract of land known as parcel 173/23 for the widening of South Dakota Avenue; and to use for street purposes nine thousand square feet, more or less, of a tract of land known as parcel 243/15 for the extension of Trenton Street and for the widening of Fourth Street southeast; and to use for street purposes one thousand five hundred and twenty-one and twenty-eight one-hundredths square feet of lot 802, square 1232, and three thousand six hundred and sixty-nine and eighty-eight one-hundredths square feet of lot 837, square 1300, for the widening of Wisconsin Avenue, all as shown on maps designated as Street Extension Maps 1150 and 1154, and Surveyor's Office Maps 1314 and 1373, on file in the office of the surveyor of the District of Columbia, all the above-described property herein authorized to be used for street purposes being owned by the United States of America.

District of Columbia. Use authorized of designated United States land in, for street purposes.

Approved, February 27, 1929.

CHAP. 354.—An Act To authorize the consolidation and coordination of Government purchases, to enlarge the functions of the General Supply Committee, to authorize the erection of a public warehouse for the storage of Government supplies, and for other purposes.

February 27, 1929.
[H. R. 5749.]
[Public, No. 853.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, through the General Supply Committee established under the provisions of section 4 of the Act approved June 17, 1910, entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1911, and for other purposes," is hereby authorized and directed to purchase or procure and distribute supplies to meet the

General Supply Committee. Supplies for executive departments, establishments, and District of Columbia, to be purchased and distributed through.

71st Congress, 3d Session } HOUSE OF REPRESENTATIVES { Report No. 2432

TO CLARIFY MEANING AND INTENTION OF ACT TO REGULATE THE PRACTICE OF THE HEALING ART

JANUARY 30, 1931.—Referred to the House Calendar and ordered to be printed

Mr. ZIHLMAN, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany H. R. 12169]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 12169) to amend the meaning and intention of an act of Congress entitled "An act to regulate the practice of the healing art to protect the public health of the District of Columbia," approved February 27, 1929, having considered the same, report back to the House with the recommendation that the legislation do pass.

The purpose of this bill is to clarify the definition of naturopathy. The Commissioners of the District, in defining the type of work that might be performed by the naturopaths under the act of February 27, 1929, excluded from their definition the right of the naturopaths to diagnose a case or to administer drugs, medicines, or perform surgical operations. The naturopaths are not concerned with the use of drugs, and do not desire to perform surgical operations, because naturopathy does not contemplate drugs or surgical operations, nor is it within the scope of their science of practice. They have advised the committee that never, as part of any such treatment, have they used drugs, or ever performed or attempted to perform any surgical operation.

Naturopaths practice and teach that the living body is a vital machine, and that retention of waste products in the body, and the nonelimination of drugs are considered the most important underlying causes of disease, so that they could not consistently prescribe them.

Naturopathy, they aver, is a system of natural methods comprising the use of air, earth, sunshine, water, heat and cold, harmonized food, and the use of dehydrated vegetables, herbs, fruits, and any natural modalities, and it is their belief, and the belief of this committee, that they should not be excluded the use of vegetables and herbs, fruits, or any other natural modalities, in their practice.

The committee therefore recommends the early passage of this measure, so that the type of service to be performed by those in the naturopathy profession may be clearly defined.

O

TO AMEND MEANING AND INTENT OF HEALING ART PRACTICE ACT OF FEBRUARY 27, 1929

HEARING

BEFORE THE

COMMITTEE ON THE DISTRICT OF COLUMBIA HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

THIRD SESSION

ON

H. R. 12169

A BILL TO AMEND THE MEANING AND INTENTION OF AN ACT OF CONGRESS ENTITLED "AN ACT TO REGULATE THE PRACTICE OF THE HEALING ART TO PROTECT THE PUBLIC HEALTH OF THE DISTRICT OF COLUMBIA," APPROVED FEBRUARY 27, 1929

JANUARY 28, 1931

UNITED STATES
GOVERNMENT PRINTING OFFICE
30286 WASHINGTON: 1931

COMMITTEE ON THE DISTRICT OF COLUMBIA

HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

FREDERICK N. ZIHLMAN, Maryland, *Chairman*

CLARENCE J. McLEOD, Michigan.
EDWARD M. BEERS, Pennsylvania.
GALE H. STALKER, New York.
FRANK R. REID, Illinois.
FRANK L. BOWMAN, West Virginia.
ALBERT R. HALL, Indiana.
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C. B. McCLINTOCK, Ohio.
MERLIN HULL, Wisconsin.
FREDERICK C. LOOFBOUROW, Utah.

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MARY T. NORTON, New Jersey.
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VINCENT L. PALMISANO, Maryland.
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ROBERT S. HALL, Mississippi.
WRIGHT PATMAN, Texas.

BEST AVAILABLE COPY

TO AMEND MEANING AND INTENT OF HEALING ART PRACTICE ACT OF FEBRUARY 27, 1929

WEDNESDAY, JANUARY 28, 1931

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D. C.

The committee met at 11 o'clock a. m., Hon. Frederick N. Zihlman (chairman of the committee) presiding.

The CHAIRMAN. The committee will now hear general argument on Mrs. Langley's bill, H. R. 12169, which is as follows:

[H. R. 12169, Seventy-first Congress, second session]

A BILL To amend the meaning and intention of an act of Congress entitled "An act to regulate the practice of the healing art, to protect the public health of the District of Columbia.", approved February 27, 1929

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the act of Congress entitled "An act to regulate the practice of the healing art to protect the public health in the District of Columbia," approved February 27, 1929, shall be construed to authorize the Commission on Licensure provided for in the said act to make, or to give, or to require, any applicant for license to practice as a naturopath in the District of Columbia to make or give any definition of the character and limits of the method of healing to be practiced by him or her as a naturopath. The object and intent of this act is to require that the aforesaid act of Congress, approved February 27, 1929, shall be construed to mean that "naturopathy" as a branch of the healing art is placed upon the same basis as medicine, osteopathy, and chiropractic; that the said act of Congress means; and shall be construed to mean, that the term "naturopathy," as used therein, is self-definitive to the same extent as are the terms "medicine," "osteopathy," and "chiropractic," that no applicant for license to practice naturopathy under the said act of Congress is required, in making application for such license, to give the character and limits of the method of healing practiced by him or her as a naturopath; nor shall the Commission on Licensure make, give, or establish any definition of the character and limits of the method of healing to be practiced by naturopaths.

SEC. 2. It is further enacted that "naturopathy," as used in the aforesaid act, approved February 27, 1929, hereafter shall comprehend, embrace, and be composed of the following acts, practices, and usages: Diagnosis and practice of physiological, mechanical, and material sciences of healing as follows: The physiological and mechanical sciences such as the mechano-therapy, articular manipulation, corrective and orthopedic gymnastics, neurotherapy, psychotherapy, hydrotherapy, and mineral baths, electrotherapy, thermotherapy, phototherapy, chromotherapy, vibrotherapy, thalmotherapy, and dietetics, which shall include the use of foods of such biochemical tissue-building products and cell salts as are found in the normal body; and the use of vegetal oils and dehydrated and pulverized fruits, flowers, seeds, barks, herbs, roots, and vegetables uncompounded and used in their natural state.

STATEMENT OF HON. KATHERINE LANGLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mrs. LANGLEY. Mr. Chairman and members of the committee, on behalf of the advocates of this bill, which I introduced at the present session of Congress, I want to thank the members and the

chairman for their gracious courtesy in allowing us to present the merits of this bill during the pressing and busy days attendant upon the closing of this session of Congress.

For the purpose of the record I want to recall to the committee that on February 27, 1929, Senate Resolution 3936 was approved. When it was before the House there was an amendment introduced and passed under section 8—and I may add that this Senate 3936 was an act regulating the practice of the healing art to protect the public health in the District of Columbia—the heading of section 8 under this amendment, which my bill clarifies, is, "The commission shall appoint boards of examiners as follows." Now, the amendment says "and a board of examiners in naturopathy."

I was very much interested in my colleague's presentation of the name of a street going back to the Constitution. The branch of the healing art of which I have introduced an amendment that I referred to, to this bill, which only clarifies the bill, is as old as the Constitution itself. I hold in my hand this morning a pamphlet showing that the naturopath rights are covered in the original 13 States of America under the old herbalist charter, and could not under the general laws of the colonies be taken over by the United States. These rights are still in force in those States.

The proponents of this bill feel that the rights of naturopathy are in line with the rights of the medical profession, especially with those of the other groups of the healing art, to operate in the District of Columbia; and that naturopathy is self defining. The purpose of the bill which I introduced is not to create new legislation, but rather to clarify the legislation which was introduced under the Senate bill to which I have just referred.

I feel that this group, just as the other groups of healing arts in the District of Columbia, are performing a great humanitarian service, not only in the District of Columbia, but throughout the United States. I think it is only just and right to any great group operating under our charter and under our care and doing great service, that justice should be done them in connection with the types of service which they are rendering.

There has been criticism in the District of Columbia that they are attempting to overlap, I believe, other branches of the healing art, such as in the use of instruments, operating, and medicine—using medicine in connection with their work. If you will look at section 2 of this bill, you will find that this clearly clarifies and defines the types of work under which they are operating. And I contend that the commissioners who have the right to interpret the methods, can not sit in judgment to define the ways and the purposes of different groups in the District. I want to be brief this morning, realizing, as I have said at the outset, that you are very busy members. This is only a clarifying situation, to give justice to a splendid group.

I personally want to pay tribute to the next lady who will speak. Being a woman, I am very glad to pay tribute to her. She is the president of the Naturopath Association of the District of Columbia, and has done wonderful work, to which I can personally bear testimony.

I shall turn over the meeting to Dr. T. M. Schippell, of Sixteenth Street, to conduct the meeting. But I before I turn the meeting over

to her, I will be very glad to answer any questions that the members of the committee might want to ask me in connection with the purpose of the bill.

I might say that there has been some confusion as to the methods and types of work which they may do. I feel that they are well within their rights and should be protected, as I know that you all want to see done in the District of Columbia particularly.

Mr. PALMER. Does this bill have the approval of any of the medical associations?

Mrs. LANGLEY. It is not a question of the particular approval of any medical association. They are a group different from the medical group; and, as I understand it, different groups differ in their ideas and methods, and I do not sit in judgment upon any particular group. I assume that they are within their rights, else they would not be allowed to practice any healing art in any community in the United States.

Mr. HULL. May I ask one question? The definition finally adopted of naturopathy restricted them from administering drugs or performing operations on the person, did it not?

Mrs. LANGLEY. Mr. Hull, I am trying to bring out the point that they do not desire to use drugs; nor do they desire to operate with surgical instruments; and that the commissioners in dealing with them erroneously construed the method which they use.

Mr. HULL. Are they satisfied with those restrictions as they are at present?

Mrs. LANGLEY. I will let Doctor Schippell answer that question. I will present her now, Mr. Chairman and members.

STATEMENT OF DR. T. M. SCHIPPELL, PRESIDENT OF THE AMERICAN NATUROPATHIC ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. HULL. Mr. Chairman, I am wondering if Mrs. Schippell would explain this point that I have just raised. I would like to have the explanation in mind. Otherwise I won't interfere with your statement.

The statement from the commissioners is that the definition finally adopted provides for the licensing of naturopaths, but restricted them from administering drugs or performing operations on the person. So I understand from that that you are licensed now in the District of Columbia, but that you are restricted in that license.

Doctor SCHIPPELL. We are.

Mr. HULL. Is the object of this bill merely to remove that restriction?

Doctor SCHIPPELL. No. We are not here contending to use drugs or surgery. But they have accepted the definition for osteopathy and chiropractic and medicine, and we naturopaths have our definition of what we practice. We defined naturopathy, but they excluded, took away from our definition some of the particular parts of our work.

Mr. HULL. Thank you. I just wanted to get that clear in my mind.

The CHAIRMAN. Doctor, you might explain to Mr. Hull that you are now licensed under the medical act. I think that act was passed in 1926 or 1927?

Doctor SCHIPPELL. 1929.

The CHAIRMAN. Your branch of the healing art was defined in that bill, and it was acceptable to the representatives of the medical profession at that time. As I understand it, your contention is that the board of examiners have not correctly defined your particular branch of the healing art? Is that right?

Doctor SCHIPPELL. That is right.

The CHAIRMAN. And this legislation is to clarify the existing law and to act more or less as a mandate to the board of examiners as to the healing art that you should be permitted to perform?

Doctor SCHIPPELL. That is right.

The CHAIRMAN. And you are not contending for the use of drugs or surgical instruments.

Doctor SCHIPPELL. We are not. We do not want to use them; and it was an error, through the medium of the press at that time, that we did want to use drugs and surgery.

We have nothing in common in our practice with the use of surgery or drugs.

Mr. HULL. Pardon me for interrupting. I just wanted to get my understanding clear.

Mrs. LANGLEY. I might add that they are restricted under the definition of the healing art by the commissioners.

Doctor SCHIPPELL. Yes. So we think under the definition that was finally adopted by the commission, they have given us the use of physical forces, as air, light, water, vibration, heat, electricity, hydrotherapy, psychotherapy, physiotherapy, dietetics, and massage. But they did not include analysis or adjusting the articulations of the spinal column.

Now, that is one of our great things, a part of our healing art in our science. We must have this, what they have excluded from our definition. That is one of our great factors. We can not merely get along without the use of analysis and adjusting the articulations of the spine.

I just would like to give here a notation to expedite matters at this point.

"When waste material or other ptomaine, poisonous, alkaloids, and acids produced in the body as the result of wrong diet and other violations of nature's laws have brought about destruction and corrosion in vital parts and organs; when dislocation and subluxations of bony structures or new growth and accumulation in the forms of tumors, stones, or gravel obstruct the blood vessels and the nerve currents shut off the supply of the vital fluid, and thus cause malnutrition and gradual decay of the tissues; when in addition to this the organism has been poisoned, mutilated by drugs and surgical operation, then its purification and repair becomes a tedious and difficult task. Not only the mechanism of the body must be clean and free from obstruction and destruction material, but the injured parts must be repaired and morbid growth, abnormal formation, dissolved and eliminated and lesion in the bony structures corrected by manipulation treatment. This can only be accomplished by the combined influence of all the natural methods of living and of treatment."

So that is a part of our work, and we really do need that in our definition. We can not exclude that, because by this active and

passive treatment we correct the conditions in the body. The elimination must be done that way. In any organic disease the vitality is usually so low and the destruction so great that the organism can not arouse itself to self-heal. So we must give this active and passive treatment in order to palpate to a normal condition.

Now, in the use of drugs, that is one point to our view. The other is that they are making much contention of using herbs. We contend that the use of dehydrations of fruits and vegetables and herbs is a part of the food science. We have included in our definition dietetics, so the herbs come under the definition, defined as dietetics. So we want this particularly emphasized in our definition—to have the use of herbs.

We do not want any drugs or surgery. Naturopaths practice and teach that the living body is a vital machine. Retention of waste products in the body, and the nonelimination of drugs are considered the most important underlying causes of disease; therefore we could not consistently prescribe them. Nor do we want them. We are just as much opposed to drugs; and we include in drugs even tea, coffee, cocoa, chocolate, liquor, and tobacco, which also have a very destructive rate of vibration in the body, and we can not have normalcy in the body with the use of these.

So we are opposed to them. We surely do not want drugs, which only bring corrosiveness in the body and destroy the organs.

Much cancerous conditions are caused through the use of drugs, serums, and inoculations; and we contend that the use of vaccines even is very destructive in the body, and that we can not use them with any good result; that later in the patient's years we are bringing on these latent diseases.

We have had more cancerous condition within the past 20 years than ever before, brought on through the use of much drugging, and the use of vaccines and inoculations. So, of course, we do not want drugs nor surgery. We are very much opposed to it; because when you take out the organs, there is an unbalanced condition in the body.

I have many patients who can testify to the different diseases that they have had, and that we have aborted many an operation. We do not need operations if we can get the body back under normal conditions through the use of natural methods.

I would like to ask a few patients to speak. Mr. Chairman, may I ask Mr. Leaman to testify as to his past troubles?

STATEMENT OF WALTER LEAMAN

Mr. LEAMAN. My trouble was asthma, and I tried the best doctors that I was recommended to in town.

My trouble started in the first place as a sinus operation, of which I had three. They left me with asthma, and I think all you gentlemen know what asthma is. I have tried all the doctors that I could possibly be recommended to. I didn't get any results at all. Three of them gave me up, said that they couldn't do anything for me.

As a last resort I heard of Doctor Schippell. The only thing that a doctor would be able to do for me in the way of asthma is to give me adrenalin. They give relief but they don't cure. They don't cure anything with drugs.

I have a lot of friends in the same condition. I have referred a great many of them to her. Some of them are here to-day.

Well, she started off with the treatment. Up to that time—that is about four years ago—I was taking all kinds of medicines and injections in order to alleviate any paroxysms that I would have every night two or three times a night, and sometimes one or two during the daytime.

When I started with her, my wife used to give me adrenalin and injections. When I got a paroxysm, inside of 10 minutes it would get me over it. In fact, she went with me first when I went to Doctor Schippell. I knew nothing about Doctor Schippell, and had very little faith in her, as I did in any other doctor.

On the afternoon that I went down there, my wife took the adrenalin with her so as to have it if I should have a paroxysm. I did not have any at the time when she gave me treatment, but I did have one at night time that night.

Next day I went down and took a treatment. I took a treatment. I stayed from my business about a year and a half. I would go down in the afternoon at 2 o'clock and stay until half past 5. You know that that is the busiest time of the day for a business man, and I am busy. But there was nothing else to do.

So I started taking treatments. I took a treatment every day except Wednesday and Saturday, the days that she did not give treatments.

I never used adrenalin from that day to this. I kept up these treatments, I think, about a year and a half. I am positively cured. I have had no trouble whatever.

Furthermore, I want to state that she never gave me a drug or medicine of any kind; just diet that I went on. I lost weight. I was down to about 140. Now I am 165 pounds stripped.

Well, I haven't been so particular about following her instructions about eating. I have been eating a lot more and getting some more weight. I have neglected the diet somewhat. Since I have got over it, I feel that I am entitled to. I have got to build my body up in order to throw off the asthma.

I am awfully glad that Doctor Schippell called on me to attend this hearing and testify for her. She has not asked me to say anything. I am just telling you what occurs to me.

I don't believe that I can add any more to that. It is only out of gratitude that I came down to attend this hearing. I don't know what Doctor Schippell's treatments are. But I know one thing, that there are a lot of people that are very happy on account of them. I can say that much for her. I think that is about all that I can say.

Doctor SCHIPPELL. Thank you.

STATEMENT OF WILLIAM TARVER

Mr. TARVER. It is not necessary for me to sit down, because I am only going to say a word.

I have been suffering from spinal arthritis that I know of for 4 years; and up to within 3 or 4 weeks ago there had not been a day or a minute, I might say, that I was not in pain. I have been under treatment of some of the most distinguished physicians of this community, and they all told me that I could not be cured, but that they might check the progress of the disease.

We have been fighting it for at least two years under the directions of these physicians that I have visited; and we perhaps have kept it in check to some extent. I don't know. But, all the same, I was suffering all the time and was in great pain.

That is a trouble in which we have acute attacks. We think we are getting along pretty well, and the first thing we know we have an acute attack.

After all that time, and under the directions of physicians, last December the 7th I had quite an acute attack in the morning. I had heard of Doctor Schippell, and I made up my mind that I was going to try something else.

So I went to Doctor Schippell. I called her up and asked her if she could give me a treatment.

Then I might say that my son carried me down there in his automobile. It was as much as I could do to climb up the stairs. I had to pull myself up in great pain.

Inside of a week I was pretty well limbered up, able to attend to my business; and now I am practically free from pain entirely.

It seems to me that the work that she has done is almost miraculous. And in that work, as this seems to be one of the questions involved, was a manipulation of my spine, which I think was essential to the good work she has done.

My gratitude for the relief that she has given me is the reason that I am down here to testify.

STATEMENT OF MILTON A. TRENHAM

Mr. TRENHAM. I just want to speak a few words for Doctor Schippell's treatment in regard to what she has done for my wife, who was suffering from congestion and curvature of the spine.

After going to different doctors for the past ten years—she is a woman of 37 years of age—she had not got any results from the condition of her spine. For the past six months Doctor Schippell has almost cured her from that ailment, the curvature of the spine.

Generally in persons that are past 25 it is pretty hard to correct an ailment of that kind. She is 37 years old, and has been almost completely cured from that condition, curvature of the spine. The congestion has almost left her, and she is in better health now than she has been for over ten years.

STATEMENT OF GILLARD W. APGAR

Mr. APGAR. What I can say is that three years ago last March I was taken with acute arthritis of the left knee. I called in a doctor who was right near me. He said, "Go to the hospital in the morning and have the varicose veins cut out."

He was not my family doctor. My family doctor was out of town. I called in my family doctor's father. He came at 9 o'clock on Saturday morning. He said it was acute rheumatism. So he paid me four visits from Saturday to Sunday. His son came home on Monday morning. Well, he didn't know what it was. He doctored me for a month, until I got mad. I said, "Doctor, I want to know if I am going to have a stiff leg for the rest of my life."

He said, "Mr. Apgar, you are beyond medical aid." He said, "I can not do anything for you. If you were an ex-service man, I could send you to Walter Reed."

I said, "Doctor, I am ex-service."

That afternoon at 4 o'clock I went to Walter Reed Hospital. I had those doctors examine me at the Veterans' Bureau. None of them knew what it was. I went in Walter Reed Hospital, and all the doctors did there was to take that knee and try to straighten it down, and it was some pain.

So I said to the major, "Major, what are you going to do?"

He said, "There is absolutely no treatment that we can give you. We are going to keep you under observation."

I said, "All right." I made up my mind then that I was going to leave that day.

So I didn't know at the time that Mrs. Apgar had made arrangements for me to go to see Doctor Schippell. Mrs. Apgar came for me at 1 o'clock. She said, "What is all this?" They had lumber there enough almost to build half a house. They were going to put my leg in traction. I said, "You are going to put my leg in traction? No. I am going away from here."

I came down to Doctor Schippell at 4 o'clock on Monday afternoon; and in half an hour she knew my case. I took a treatment, and I left there at 7 o'clock that night.

The next day I went back for another treatment. The next day, Wednesday, she told me that I need not come up. But I began to feel a funny feeling in my knee. The pain was leaving.

After a month under my family doctor and 11 days at Walter Reed, it took her half an hour to find out what ailed me. To-day I am as well as anybody.

In April I met with an accident, which caused a strangulation of double hernia. I was absolutely cured of that.

I went under two hearings of the Compensation Board, and they ordered me to go to their doctor, Doctor Wood, for an examination. I didn't see Doctor Wood personally, but I did see his assistant; and he ordered me to have an operation. I said, "No. I am not going under any operation. I don't need it." And I am here to-day to prove it.

Now, in all my treatment with Doctor Schippell I have never had a bit of medicine or drugs of any kind.

Mr. PALMER. They made a mistake in the diagnosis of your case? The trouble was in the diagnosis?

Mr. APGAR. Exactly. In other words, my doctor forbid me to eat the real stuff that would help me, and he is to-day one of the most prominent doctors in Washington, I believe, without a doubt. He and his father are considered two of the best doctors here.

Mr. HALL. Mrs. Langley, is there any opposition to this bill?

Mrs. LANGLEY. None as far as I know.

Mr. HALL. There is no opposition from the other groups?

Mrs. LANGLEY. I think this is clearly a clarifying bill. I would appreciate early action by the members of this committee.

Mr. PALMER. You are changing the construction of this definition?

Mrs. LANGLEY. Yes.

Mr. PALMER. I don't see anything wrong with reporting this bill out. We can thrash it out later.

Mr. HULL. Mr. Chairman, if there is no one here in opposition to it, I move that the bill be favorably reported.

The CHAIRMAN. I wish to put in the record the report of the commissioners. Mrs. Langley has been kind enough to print that as a

part of the little pamphlet that she has distributed. The commissioners recommended adversely on the bill.

Mr. PALMER. The House can figure it out.

Mr. PALMISANO. That can be thrashed out.

The CHAIRMAN. The letter of the commissioners is as follows:

COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, May 15, 1930.

Hon. F. N. ZIHLMAN,
Chairman Committee on the District of Columbia,
House of Representatives, Washington, D. C.

SIR: The Commissioners of the District of Columbia have the honor to submit the following on H. R. 12169, Seventy-first Congress, second session, entitled "A bill to amend the meaning and intention of an act of Congress entitled 'An act to regulate the practice of the healing art to protect the public health of the District of Columbia,' approved February 27, 1929," which you referred to them for consideration and report.

The framers of the healing arts practice act of February 27, 1929, carefully considered the various methods of healing being employed in the District of Columbia, and were doubtless convinced that some provisions should be made for the continuance in practice of the followers of these various drugless healing methods. It must, however, have been quite clear to the framers of the law, and also to the Congress when it enacted such law, that there is a distinct difference between the practice of medicine and the practice of the various methods of the so-called drugless healing and, in order to safeguard the public against the use of drugs and medicines by persons who had not been properly trained in the use of such drugs and medicines, incorporated in one of the sections of the healing arts practice act, under subsection F the following language:

"'Drugless healing' means any system of healing that does not resort to the use of drugs, medicine, or operative surgery for the prevention, relief, or cure of any disease."

The purpose of this bill is to amend the act of February 27, 1929, and to confer upon persons licensed to practice naturopathy in this District (which is clearly a method of so-called drugless healing), the right to administer internal medication. This group of practitioners of the healing art have not had training to qualify them in the use of medicine. While the bill does not specifically refer to medicine it does refer, however, to vegetal oils, flowers, seeds, barks herbs, roots, etc. Most of the medicines used by physicians in the treatment of various diseases are derived from the class of articles enumerated above, and to allow naturopathic practitioners, with their lack of knowledge of the physiological effects upon human beings of this class of remedies it would, in our judgment, be dangerous and should not be permitted. Practically all the other methods of treatment enumerated in section 2 of the bill are now being used by naturopaths, and no attempt has been made to interfere with them in this regard.

"Naturopathy" has always been known as a system of drugless healing and it would seem, therefore, that internal medication could have no part whatever in their method of healing.

For the reasons above stated, the commissioners recommend adverse action on the bill.

Very truly yours,

L. H. REICHELDERFER,
President Board of Commissioners of the District of Columbia.

Mr. Hull moves that the bill be favorably reported. Are there any remarks?

Mr. PALMISANO. May I ask if the commissioners want to be heard on this?

Mrs. LANGLEY. I presume that they do not, or they would be present. They have not been present at this hearing. But that can be brought out on the floor.

(The motion was put and carried.)

The CHAIRMAN. The bill will be favorably reported to the House.

Mrs. LANGLEY. I want to thank the members very much for their consideration.

(Whereupon at 11.55 o'clock a. m. the hearing was concluded.)

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71st CONGRESS
2d SESSION

H. R. 12169

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1930

Mrs. LANGLEY introduced the following bill; which was referred to the Committee on the District of Columbia and ordered to be printed

A BILL

To amend the meaning and intention of an Act of Congress entitled "An Act to regulate the practice of the healing art to protect the public health of the District of Columbia," approved February 27, 1929.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act of Congress entitled "An Act to regulate the practice of the healing art to protect the public health in the District of Columbia," approved February 27, 1929, shall be construed to authorize the Commission on Licensure provided for in the said Act to make, or to give, or to require, any applicant for license to practice as a naturopath in the District of Columbia to make or give any

definition of the character and limits of the method of healing to be practiced by him or her as a naturopath. The object and intent of this Act is to require that the aforesaid Act of Congress, approved February 27, 1929, shall be construed to mean that "naturopathy" as a branch of the healing art is placed upon the same basis as medicine, osteopathy, and chiropractic, that the said Act of Congress means, and shall be construed to mean, that the term "naturopathy," as used therein, is self-definitive to the same extent as are the terms "medicine," "osteopathy," and "chiropractic," that no applicant for license to practice naturopathy under the said Act of Congress is required, in making application for such license, to give the character and limits of the method of healing practiced by him or her as a naturopath; nor shall the Commission on Licensure make, give, or establish any definition of the character and limits of the method of healing to be practiced by naturopaths.

SEC. 2. It is further enacted that "naturopathy," as used in the aforesaid Act, approved February 27, 1929, hereafter shall comprehend, embrace, and be composed of the following acts, practices, and usages: Diagnosis and practice of physiological, mechanical, and material sciences of healing as follows: The physiological and mechanical sciences such as the mechano-therapy, articular manipulation, corrective and orthopedic gymnastics, neurotherapy,

psychotherapy, hydrotherapy, and mineral baths, electrotherapy, thermotherapy, phototherapy, chromotherapy, vibrotherapy, thalmotherapy, and dietetics, which shall include the use of foods of such biochemical tissue-building products and cell salts as are found in the normal body; and the use of vegetal oils and dehydrated and pulverized fruits, flowers, seeds, barks, herbs, roots, and vegetables uncompounded and used in their natural state.

A8

THE STATUTES

THIRD REVISED EDITION

Volume I

FROM THE
TWENTIETH
YEAR OF KING HENRY THE THIRD
TO THE
TENTH
YEAR OF KING GEORGE THE THIRD

A.D. 1235-1770

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chardged or chargeable by this Acte, but as executoures and administratoures be or shoulde be charged and chargeable by thordre of the cõen lawes of this realme, in actions of debte used and commensed againste them as executoures or admynistratoures.

Heirs of the King's debtors being charged shall have remedy against their executors, &c.

5. PROVIDED allso . . . that where the heyre or heyres of any the Kinge receyvours or collectoures or debtoures, is or shalbe chardged of and for his fathers or auncestoures debte or dueties whose heyre he is, wherby the lande discended or gyven to him by covyne to defraude the Kinge execucõn of suche lande unto him or them frome the saide father or auncestoure, is put in execucõn, that thanne suche heyre or heyres shall and maie have his or theyre action of debte againste the executoures or admynistratoures of his saide father or auncestour, and shall have execucõn of the goode and catalls of the saide father or anncestour being in thande of the saide executoures or admynistratoures at the time of the saide action brought. . . .

Act shall not extend to collectors of customs, &c.

6. PROVIDED allwaie that this Acte shall not extende to the collectoures of the Kinge custome and of the subsidie of tonnage and pondage whiche be accomptable yerelie in the Kinge Majesties Eschequier.

Nor to payment of pensions, &c. by general or particular receivers.

7. PROVIDED allwaies that this Acte or any thing therin conteyned, shall not extende or be prejudiciall to any the saide generall or pticular receyvour or receyvo'rs, to or for the paimente of any pencõns fees annuities rente or other allowaunces by them or any of them paide or to be paide to any psone or psones, according to suche allowaunce order or decree as be or hereafter shalbe allowed or ordered or decreed in any of the saide courtes; any thing in this Acte to the contrarye notwithstanding.

* * * * * * * * *

CHAPTER VIII

AN ACTE that persones being no cõen Surgeons maie mynistre medicines owtwarde. [1]

Recital of Stat. 3 H. 8. c. 11. for regulation of physicians and surgeons;

WHERE in the Parliament holden at Westñ in the thirde yere of the Kinge moste gracious reigne, amongest other thinges for the advoyding of sorceryes witchecrafte and other inconveniences, it was enacted, that no psone within the citie of London, nor within seven myles of the same, shoulde take upon him to exercyse and occupie as phisician or surgeon, except he be first examyned approved and admytted by the bisshopp of London and other, undre and upon certaine peynes and penalties in the same Acte mencioned; sithens the making of whiche saide Acte the companie and felowship of surgeons of London, mynding oonelie theyre owne lucres, and nothing the profite or ease of the diseased or patient, have sued, troubled and vexed divers honest psones aswell men as woomen, whome God hathe endued with the knowledge of the nature kinde and operacõn of certeyne

persons performing cures of sores, &c. by herbs, &c. sued by the surgeons for so doing;

[1 Short title, "The Herbalists Act, 1542", see 12 & 13 Geo. 6. c. 62. sch. 2 (S.L.R.)]

herbes rotes and waters, and the using and mynistering of them to suche as been pained with customable diseases, as womens brestes being sore, a pyn and the web in the eye, uncoomes of hande scaldinge burninge sore mouthes the stone strangurye saucelin and morfew, and suche other lyke diseases, and yet the saide psones have not takin any thing for theyre peynes and cooninng, but have mynistred the same to the poore people oonelie for neighbourhode and Goddes sake and of pitie and charytie; and it is nowe well knowen that the surgeons admytted wooll doo no cure to any psone, but where they shall knowe to be rewarded with a greater soome or rewarde than the cure extendeth unto, for in case they wolde mynistre theyre coonning to sore people unrewarded, there shoulde not so manye rotte and perishe to deathe for lacke of helpe of surgerye as dailie doo, but the greatest parte of surgeons admytted been muche more to be blamed than those psones that they trouble, for althoughe the most parte of the psones of the saide crafte of surgeons have small cooning, yet they wooll take greate soomes of money and doo litle therfore, and by reasone therof they doo often tymes impaire and hurte theyre patiente rather thenne doo them good: In consideracõn wherof and for the ease comforte socour helpe relief and healthe of the Kinge poore subjecte inhabytaunte of this his realme, nowe peyned or diseased, or that hereafter shalbe peyned or diseased, be it ordeyned establisshed and enacted by thauctorytie of this pnt Parliament, that at all tymes from hensforthe, it shalbe lefull to every psone being the Kinge subject having knowledge and experience of the nature of herbes rotes and waters or of the operacõn of the same by speculacõn or practyse, within any parte of the realme of Englande, or within any other the Kinge domynions, to practyse use and mynistre in and to any outwarde sore uncoom wounde apostemacõns outwarde swelling or disease, any herbe or herbes oyntemente bathes pultes and emplasters according to theyre cooning experience and knowlege in any of the diseases sores and maladies aforesaide and all other lyke to the same, or drinkes for the stone strangurye or agues, without sute vexacõn trouble penaltie or losse of theyre goode. The foresaide statute in the foresaide thirde yere of the Kinge most gracious reigne, or any other Acte ordinance or statute to the contrarye hereof heretofore made in any wise notwithstanding.

such person may cure o ward sores herbs, oint ments, &c. stone or ag by drinks, without bei sued under recited Act.

CHAPTER IX

An Acte for the Preservacõn of the Ryver of Severne.

[*St. 1–3 rep.* 11 & 12 *Geo.* 6. *c.* 62 (*S.L.R.*)]

4. (1) And be it allso enacted by auctorytie abovesaide, that no psone or psones, . . . doo caste or unlade out of any maner of ship crayer or any other vessell, being within any haven rode chanell or ryver flowing or rooning to any porte towne or to any citie boroughe or towne within this realme or any other the Kinge domynions, any maner of balaste rubbishe gravell or any other wracke or filthe, but

None shall unlade ballas &c. from shi in any haven or rivers, except on la above high-water mark.

(1 This clause is annexed to the original Act in a separate schedule.]

A9

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Dictionary of Occupational Titles

Fourth Edition, Revised 1991

Volume I

U.S. Department of Labor
Lynn Martin, Secretary

Employment and Training Administration
Roberts T. Jones
Assistant Secretary of Labor

U.S. Employment Service
1991

3 1133 02470 9778

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079.101-010 CHIROPRACTOR (medical ser.) alternate titles: chiropractic; doctor, chiropractic

Diagnoses and treats musculoskeletal conditions of spinal column and extremities to prevent disease and correct abnormalities of body believed to be caused by interference with nervous system: Examines patient to determine nature and extent of disorder. Performs diagnostic procedures including physical, neurologic, and orthopedic examinations, laboratory tests, and other procedures, using x-ray machine, proctoscope, electrocardiograph, otoscope, and other instruments and equipment. Manipulates spinal column and other extremities to adjust, align, or correct abnormalities caused by neurologic and kinetic articular dysfunction. Utilizes supplementary measures, such as exercise, rest, water, light, heat, and nutritional therapy.
GOE: 02.03.04 STRENGTH: M GED: R5 M4 L5 SVP: 8 DLU: 89

079.101-014 DOCTOR, NATUROPATHIC (medical ser.)

Diagnoses, treats, and cares for patients, using system of practice that bases treatment of physiological functions and abnormal conditions on natural laws governing human body: Utilizes physiological, psychological, and mechanical methods, such as air, water, light, heat, earth, phytotherapy, food and herb therapy, psychotherapy, electrotherapy, physiotherapy, minor and orificial surgery, mechanotherapy, naturopathic corrections and manipulation, and natural methods or modalities, together with natural medicines, natural processed foods, and herbs and nature's remedies. Excludes major surgery, therapeutic use of x ray and radium, and use of drugs, except those assimilable substances containing elements or compounds which are components of body tissues and are physiologically compatible to body processes for maintenance of life.
GOE: 02.03.04 STRENGTH: L GED: R5 M4 L5 SVP: 7 DLU: 77

DICTIONARY

OF

OCCUPATIONAL TITLES

1965

Volume I

DEFINITIONS OF TITLES

Third Edition

U.S. DEPARTMENT OF LABOR
W. Willard Wirtz, Secretary
MANPOWER ADMINISTRATION
Bureau of Employment Security
Robert C. Goodwin, Administrator

For sale by the Superintendent of Documents
U.S. Government Printing Office, Washington, D.C., 20402
Price $3.00 (Buckram)

DOCTOR, HERB (medical ser.) 079.378. herbalist Treats diseases and disorders of human body by applying herbs and medicinal plants.

DOCTOR, NAPRAPATHIC (medical ser.) 079.378 Treats patients, using system based on theory that al disease symptoms result from strained or contracted ligaments in the pelvis, spine, or thorax. Manually manipulates and massages ligaments in affected area.

DOCTOR, NATUROPATHIC (medical ser.) 079.108 naturopathic physician. Diagnoses, treats, and cares fo patients, using a system of practice that bases its treatment of all physiological functions and abnormal conditions on natural laws governing the body: Utilizes physiological, psychological, and mechanical methods, such as air, water, light, heat, earth, phytotherapy, food an herb therapy, psychotherapy, electrotherapy, physi therapy, minor and orificial surgery, mechanotherapy naturopathic corrections and manipulation, and a natural methods or modalities, together with natur medicines, natural processed foods, and herbs and n ture's remedies. Excludes major surgery, therapeut use of X-ray and radium, and use of drugs, except tho

assimilable substances containing elements or compounds which are components of bodily tissues and are physiologically compatible in body processes for maintenance of life.

DICTIONARY
OF
OCCUPATIONAL TITLES
Part I
DEFINITIONS OF TITLES

Prepared by
THE JOB ANALYSIS AND INFORMATION SECTION
DIVISION OF STANDARDS AND RESEARCH

JUNE * * * * * 1939

UNITED STATES DEPARTMENT OF LABOR
Frances Perkins, Secretary

UNITED STATES EMPLOYMENT SERVICE
William H. Stead, Chief Executive Officer

United States Government Printing Office
Washington : 1939

For sale by the Superintendent of Documents
Washington, D. C. Price $2.00 (Buckram)

DOCTOR, CHIROPRACTIC (medical ser.) *see* CHIROPRACTOR.

DOCTOR, HERB: herbalist (medical ser.). A HEALER. Professes to cure sickness through the application of various herbs and medicinal plants which he collects.

DOCTOR, NAPRAPATHIC (medical ser.). A HEALER who treats diseased ligaments.

DOCTOR, NATUROPATHIC: naturopath; naturopathist; naturotherapist (medical ser.). A HEALER. Treats patients with a system of physical culture and drugless treatment of disease by methods supposed to stimulate or assist nature.

DOCTOR OF DENTISTRY (medical ser.) *see* DENTIST.

DOCTOR OF MEDICINE (medical ser.) *see* PHYSICIAN.

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§ 404.1513 Medical evidence of your impairment.

(a) Acceptable sources. We need reports about your impairments from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (we may need a report from a physician to determine other aspects of eye diseases); and

(5) Persons authorized to send us a copy or summary of the medical records of a hospital, clinic, sanitorium, medical institution, or health care facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency. However, we will not return an uncertified copy or summary for certification unless there is some question about the document.

(b) Medical reports. Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed with response, and prognosis; and

(6) Medical assessment (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced wives).

(c) **Medical assessment.** The medical assessment should describe—

(1) Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) **Completeness.** The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities.

(e) **Information from other sources.** Information from other sources may also help us to understand how your impairment affects your ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources; and

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.).

LIBRARY REFERENCES

American Digest System
Disability claims, medical evidence of disability, see Social Security and Public Welfare ⇐143.65.
Encyclopedias
Weight and sufficiency of evidence, medical evidence of disability, see C.J.S. Social Security and Public Welfare § 71.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Psychologists or psychiatrists 1
Treating physicians 2
Weight and conclusiveness of medical opinions 3

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1. Psychologists or psychiatrists

Secretary, who denied plaintiff's claims for disability benefits, could not dismiss diagnosis of claimant's treating physician, a cardiologist, that claimant suffered from cardiac neurosis simply because cardiologist was not a psychiatrist. Heinze v. Heckler, D.C.Pa.1983, 581 F.Supp. 13.

Clinical psychologist's report after examination of claimant's intelligence and

personality that claimant might be able to obtain employment if he were in a little better shape emotionally was not evidence of a type sufficient to support determination of existence or nature and extent of claimant's disability flowing from psychosomatic or psychoneurotic causes. Cooney v. Finch, D.C.Pa.1969, 300 F.Supp. 818.

2. Treating physicians

Failure of administrative law judge to elicit any opinion from plaintiff's principal treating physician as to plaintiff's residual functional capacity and failure to ask physician to furnish physical capacities evaluation was contrary to this regulation, which recognized treating physician as primary and best source of medical evidence. Van Huss v. Heckler, D.C.Va.1983, 572 F.Supp. 160.

3. Weight and conclusiveness of medical opinions

In social security case, weight to be given physician's statement is dependent upon extent to which it is supported by specific clinical findings. Jones v. Heckler, C.A.Miss.1983, 702 F.2d 616.

Physicians' opinions and Veterans Administration's decision that disability benefits claimant was disabled and could not perform his previous jobs were not binding on Secretary of Department of Health and Human Services, but they were evidence entitled to great weight. Epps v. Harris, C.A.Fla.1980, 624 F.2d 1267.

Evidence that, in opinion of one physician, applicant for social security disability benefits was suffering from multiple sclerosis and had been disabled since 1964, and that in opinion of five other physicians applicant was not suffering from multiple sclerosis and was not disabled, was sufficient to support finding of Secretary that applicant was not totally disabled and thus not entitled to benefits. LeMaster v. Weinberger, C.A.Ohio 1976, 533 F.2d 337.

Although medical opinion is not conclusive on disability and that decision is for the Secretary of Health and Human Services to make, neither is the Secretary at liberty to simply ignore uncontroverted medical reports. Gerena v. Secretary of Health and Human Services, D.C. Puerto Rico 1985, 618 F.Supp. 246.

§ 404.1514 When we will purchase existing evidence.

We need specific medical evidence to determine whether you are disabled or blind. You are responsible for providing that evidence. However, we will pay physicians not employed by the Federal government and other non-Federal providers of medical services for the reasonable cost of providing us with existing medical evidence that we need and ask for after November 30, 1980.

[46 FR 45757, Sept. 15, 1981]

LIBRARY REFERENCES

American Digest System

Disability claims, medical evidence of disability, see Social Security and Public Welfare ⇐143.65.

Encyclopedias

Weight and sufficiency of evidence, medical evidence of disability, see C.J.S. Social Security and Public Welfare § 71.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

A11

FEDERAL TAX REGULATIONS

1996

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Volume 4

WEST PUBLISHING CO.
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integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his ministry.

(v) If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry. The application of this rule may be illustrated by the following example:

Example. M, a duly ordained minister, is assigned by X, the religious body constituting his church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his ministry.

(c) **Service by a minister not in the exercise of his ministry.** (1)(i) A certificate filed by a duly ordained, commissioned, or licensed minister of a church under the provisions of § 1.1402(e)(1)–1 has no application to service performed by him which is not in the exercise of his ministry.

(ii) An exemption under section 1402(e) (see §§ 1.1402(e)–1A through 1.1402(e)–4A) which is effective with respect to a duly ordained, commissioned, or licensed minister of a church has no application to service performed by him which is not in the exercise of his ministry.

(2) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry. See, however, subparagraph (3) of this paragraph. The application of the rule in this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. He performs no other service for N although from time to time he performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his ecclesiastical superiors. The service performed by M for N University is not in the exercise of his ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his ministry.

(3) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his ministry for purposes of the tax on self-employment income, even though such service may involve the ministration of sacerdotal functions or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his capacity as such, and not by a minister in the exercise of his ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his ministry.

(d) **Service in the exercise of duties required by a religious order.**—(1) **Certificate of election.** A certificate of election filed by a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) under the provisions of § 1.1402(e)(1)–1 has application to all duties required of him by such order.

(2) **Exemption.** An exemption under section 1402(e) (see §§ 1.1402(e)–1A through 1.1402(e)–4A) which is effective with respect to a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) has application only to the duties required of him by such order.

(3) **Service.** For purposes of subparagraphs (1) and (2) of this paragraph, the nature or extent of the duties required of the member by the order is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

[T.D. 6691, 28 FR 12796, Dec. 3, 1963, as amended by T.D. 6978, 33 FR 15937, Oct. 30, 1968]

§ 1.1402(c)–6 Members of certain professions.

(a) **Periods of exclusion.**—(1) **Taxable years ending before 1955.** For taxable years ending before 1955, an individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a physician, lawyer, dentist, os-

teopath, veterinarian, chiropractor, naturopath, optometrist, Christian Science practitioner, architect, certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant, funeral director, or professional engineer.

(2) **Taxable years ending in 1955.** Except as provided in paragraph (b) of this section, for a taxable year ending in 1955 an individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, or Christian Science practitioner.

(3) **Taxable years ending after 1955—(i) Doctors of medicine.** For taxable years ending after 1955 and before December 31, 1965, and individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a doctor of medicine. For taxable years ending after December 30, 1965, an individual is engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a doctor of medicine.

(ii) **Christian Science practitioners.** Except as provided in paragraph (b)(1) of this section, for taxable years ending after 1955 and before 1968, an individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a Christian Science practitioner. For provisions relating to the performance of service in taxable years ending after 1967 by an individual in the exercise of his profession as a Christian Science practitioner, see paragraph (b)(2) of this section.

(b) **Christian Science practitioner—(1) Certain taxable years ending before 1968; election.** For taxable years ending after 1954 and before 1968, a Christian Science practitioner may elect, as provided in § 1.1402(e)(1)–1, to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to service performed by him in the exercise of his profession as a Christian Science practitioner. If an election is made pursuant to § 1.1402(e)(1)–1, the Christian Science practitioner is, with respect to the performance of service in the exercise of such profession, engaged in carrying on a trade or business for each taxable year for which the election is effective. An election by a Christian Science practitioner has no application to service performed by him which is not in the exercise of his profession as a Christian Science practitioner.

(2) **Taxable years ending after 1967; exemption.** For a taxable year ending after 1967, a Christian Science practitioner is, with respect to the performance of service in the exercise of his profession as a Christian Science practitioner, engaged in carrying on a trade or business unless an exemption under section 1402(e) (see §§ 1.1402(e)–1A through 1.1402(e)–4A) is effective with respect to him for the taxable year during which the service is performed. An exemption which is effective with respect to a Christian Science practitioner has no application to service performed by him which is not in the exercise of his profession as a Christian Science practitioner.

(c) **Meaning of terms.** The designations in this section are to be given their commonly accepted meanings. For taxable years ending after 1955, an individual who is a doctor of osteopathy, and who is not a doctor of medicine within the commonly accepted meaning of that term, is deemed, for purposes of this section, not to be engaged in carrying on a trade or business in the exercise of the profession of doctor of medicine.

(d) **Legal requirements.** The exclusions specified in paragraph (a) of this section apply only if the individuals meet the legal requirements, if any, for practicing their professions in the place where they perform the service.

(e) **Partnerships.** In the case of a partnership engaged in the practice of any of the designated excluded professions, the partnership shall not be considered as carrying on a trade or business for the purpose of the tax on self-employment income, and none of the distributive shares of the income or loss, described in section 702(a)(9), of such partnership shall be included in computing net earnings from self-employment of any member of the partnership. On the other hand, where a partnership is engaged in a trade or business not within any of the designated excluded professions, each partner must include his distributive share of the income or loss, described in section 702(a)(9), of such partnership in computing his net earnings from self-employment, irrespective of whether such partner is engaged in the practice of one or more of such professions and contributes his professional services to the partnership.

[T.D. 6691, 28 FR 12796, Dec. 3, 1963, as amended by T.D. 6978, 33 FR 15938, Oct. 30, 1968]

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NEVADA REVISED STATUTES ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by the Editorial Staff of the Publisher

Under the Direction of

D. S. Tussey, S. C. Willard, W. L. Jackson, B. E. Kennedy, J. H. Runkle, and W. T. Peterson

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VOLUME 16

1995 Replacement Volume

Including Acts of the Sixty-Seventh (1993) Session and annotations taken from Pacific Reporter, Second Series, through Volume 878, page 520

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1995

630.0122. "Healing art" defined.

"Healing art" means any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition for the practice of which long periods of specialized education and training and a degree of specialized knowledge of an intellectual as well as physical nature are required. (1985, p. 2221.)

630.013. Repealed by Acts 1985, ch. 667, § 77, p. 2247.

630.0135. "Medical facility" defined.

"Medical facility" has the meaning ascribed to it in NRS 449.0151. (1985, p. 2221.)

630.014. "Physician" defined.

"Physician" means a person who has complied with all the requirements of this chapter for the practice of medicine. (1975, p. 412; 1985, p. 2224.)

Cross references. — As to general statutory definition of "physician," see NRS 0.040.

CASE NOTES

Cited in: In re Ward, 77 Bankr. 808 (Bankr. D. Nev. 1987).

LEGAL PERIODICALS

Review of Selected Nevada Legislation, Health and Welfare, 1987 Pac. L.J. Rev. Nev. Legis. 117.

630.015. "Physician's assistant" defined.

"Physician's assistant" means a person who is a graduate of an academic program approved by the board or who, by general education, practical training and experience determined to be satisfactory by the board, is qualified to perform medical services under the supervision of a supervising physician and who has been issued a certificate by the board. (1973, p. 503; 1975, p. 414.)

630.020. "Practice of medicine" defined.

"Practice of medicine" means:

1. To diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality.

2. To apply principles or techniques of medical science in the diagnosis or the prevention of any such conditions.

3. To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections 1 and 2.

4. To use in connection with a person's name the words or letters "M.D.," or any other title, word, letter or other designation intended to imply or designate him as a practitioner of medicine in any of its branches, except in the manner authorized by NRS 630A.220. (1949, p. 353; CL 1929 (1949 Supp.), § 4107.17; 1973, p. 504; 1975, p. 415; 1985, pp. 1036, 2225.)

OPINIONS OF ATTORNEY GENERAL

The term "practice of medicine" as defined by this section includes the practice of naturopathy. The imposition of the requirements of this chapter on naturopathic physicians did not violate the constitutional rights of due process and equal protection of laws. AGO 195 (11-5-1975).

No general corporation may engage in the practice of medicine. — No corporation organized under the state's general corporation law, NRS Chapter 78, may lawfully engage in the practice of medicine as defined in this section, but one or more licensed physicians may practice medicine in corporate form if they are incorporated under the Professional Corporations and Associations Act, NRS Chapter 89, and strictly comply with its provisions. AGO 219 (10-3-1977).

RESEARCH REFERENCES

Acupuncture as illegal practice of medicine. 72 A.L.R.3d 1237.

LEGAL PERIODICALS

Review of Selected Nevada Legislation, Health and Welfare. 1987 Pac. L.J. Rev. Nev. Legis. 117.

630.022. Repealed by Acts 1985, ch. 667, § 77, p. 2247.

630.025. "Supervising physician" defined.

"Supervising physician" means an active physician licensed in the State of Nevada who cosigns the application for certification of a physician's assistant and who employs and supervises the physician's assistant. (1973, p. 504; 1975, p. 415.)

630.045. License as revocable privilege.

The purpose of licensing physicians and physicians' assistants is to protect the public health and safety and the general welfare of the people of this state. Any license issued pursuant to this chapter is a revocable privilege and no holder of such a license acquires thereby any vested right. (1975, p. 413.)

630.047. Applicability.

1. This chapter does not apply to:

(a) A medical officer of the armed services or a medical officer of any division or department of the United States in the discharge of his official duties for which a license is not required;

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STATE OF NEVADA

Official Opinions

OF THE

ATTORNEY GENERAL

For the Period
January 1, 1974, to December 31, 1974, Inclusive

ROBERT LIST
Attorney General

195 Medical Practice Act—Term "Practice of Medicine," defined by NRS 630.020, includes practice of naturopathy; such inclusion is constitutional.

CARSON CITY, November 5, 1975

DR. KENNETH F. MACLEAN, *Secretary-Treasurer, Nevada State Board of Medical Examiners*, 1281 Terminal Way, Reno, Nevada 89502

DEAR DR. MACLEAN:

Recently the legal counsel for the Board of Medical Examiners requested an opinion from this office regarding the scope of the term "practice of medicine" as defined by subsection 1 of NRS 630.020.

FACTS

An individual who professes to be a bona fide graduate naturopathic physician has inquired of the Board of Medical Examiners with respect to his desire to practice naturopathy in this State. We understand naturopathy to be a form of healing which emphasizes use of the purported healing properties in natural agencies such as air, light, heat, etc. Nevada has no special statute pertaining to the practice, testing or licensing of naturopaths, although several other states appear to have such statutes.

In 1959, the Idaho Supreme Court, in the case of State v. Smith, 337 P.2d 938; held under somewhat similar circumstances that the medical practice act of Idaho was unconstitutional insofar as said act defined the practice of medicine and surgery to affect the practice of naturopathy. There being no other statute applicable, the court held no license of any type was required for the practice of naturopathy in Idaho.

On the basis of the decision in Smith, the particular naturopath who has prompted the board's inquiry to this office is likewise taking the position that NRS 630.020, subsection 1, is unconstitutional insofar as it may purport to include naturopathy within the definition of the term "practice of medicine," and, therefore, since no other law applies, this individual believes he should be allowed to practice his profession without a license at this time.

QUESTIONS

1. Does the practice of naturopathy come within the meaning of the term "practice of medicine" as defined in NRS 630.020?

2. If the answer to question 1 is "yes," does this constitute a violation of a naturopath's constitutional rights to due process or equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution and Article 1, Section 8 of the Nevada Constitution.

ANALYSIS—QUESTION ONE

The term "practice of medicine" is defined in the Nevada Medical Practice Act at NRS 630.020 to mean:

> 1. As used in this chapter, "practice of medicine" means:
>
> (a) To diagnose, treat, correct or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality.
>
> (b) To apply principles or techniques of medical science in the diagnosis or the prevention of any of the conditions listed in paragraph (a).

(c) To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in paragraphs (a) and (b).

2. It shall also be regarded as practicing medicine within the meaning of this chapter if anyone uses in connection with his name the words or letters "M.D.," or any other title, word, letter, or other designation intended to imply or designate him as a practitioner of medicine in any of its branches.

Our concern is with the definition in subsection 1 of this NRS section.

All the states have adopted medical practice acts for regulating the provision of vital health care services to their residents. As the result of such statutes, the question of whether the practice of naturopathy constitutes the practice of medicine has been before various courts—both federal and state—on a number of occasions.

In Aitchison v. State, 105 A.2d 495 (Md. 1954), a conviction of a naturopath for unlawfully practicing medicine in violation of the state medical practice act was affirmed by the Maryland Court of Appeals in a case where the defendant had argued that naturopathy was a separate and distinct school from that of allopathic medicine and not intended by the legislature to be within the scope of the medical practice act. The court, however, examined the definition of naturopathy (i.e., a system of healing which does not use drugs or surgery to cure disease, but instead makes use of the healing properties of such natural agencies as air, sunshine, water, light, heat, electricity, exercise, rest, massage, etc.) and concluded such practices fell squarely within the broad definition of the term "practice of medicine" set forth in the Maryland Medical Practice Act, Maryland Code 1951, Art. 43, Sec. 138.

The court, in Aitchison, at page 499, declared:

> It is absolutely clear from the definite language of the statute that the Legislature intended "practice of medicine" to include not only the application of medicine to patients, but any practice of the art of healing disease and preserving the health other than those special branches of the art that were expressly excepted.

A similar result was reached in Hahn v. State, 322 P.2d 896 (Wyo. 1958), by the Wyoming Supreme Court which, after a thorough review of numerous authorities cited in its decision, noted "that naturopathy is simply one of the methods of practicing medicine." This court went on to quote with approval the following language from People v. Johnerson, 49 N.Y.Supp.2d 190, 196–197:

> It has always been considered that the practice of medicine means and includes the practice of any of the so-called healing arts. The Legislature, in enacting a broad and comprehensive statute, intended thereby to protect the members of the public from untrained, unskilled and inefficient practitioners in any healing art. It is immaterial what method is used to effect a cure, or to relieve a person of pain. The true test is whether or not an attempt has been made by some manner or means to effect such cure or to relieve a person from some pain or ailment or physical condition complained of.

For other cases which rejected the contention that naturopathy is a separate and distinct profession and have held the practice of naturopathy

to constitute the practice of medicine in violation of the state medical practice act, see State v. Scopel, 316 S.W.2d 515 (Mo. 1958); Davis v. Beeler, 207 S.W.2d 343 (Tenn. 1947); State v. Errington, 317 S.W.2d 326 (Mo. 1958); Dantzler v. Callison, 94 S.E.2d 177 (S.C. 1956); State v. Errington, 355 S.W.2d 952 (Mo. 1962); and State ex rel. Shenk v. State Bd. of Examiners in the Basic Sciences, 250 N.W. 353 (Minn. 1933).

CONCLUSION—QUESTION ONE

Based on the overwhelming weight of authority from numerous jurisdictions, and any contrary expressions in State v. Smith, supra, notwithstanding, we conclude that the practice of naturopathy would constitute the "practice of medicine" as that term is defined in NRS 630.020, subsection 1, and any person desiring to engage in such a practice in this State must first apply for and receive a license to practice medicine from the Nevada State Board of Medical Examiners. NRS 630.150. Failure to do so would constitute a felony under NRS 630.410, as amended by Section 26 of Chapter 303, Statutes of Nevada 1975.

ANALYSIS—QUESTION TWO

The above-cited courts have also ruled on the constitutionality of applying the requirements of a state medical practice act to a naturopathic physician whose school may not have offered training in some of the areas included on standard tests for physicians and surgeons, etc.

For instance, in Aitchison v. State, supra, at page 498, appears the well know proposition that:

> * * * no person has an absolute vested right to practice medicine, but only a conditional right which is subordinate to the police power of the State to protect and preserve the public health. * * * This regulatory power is justified by the fact that the practice of medicine requires special knowledge, training, skill and care, that health and life are committed to the physician's care, and that patients ordinarily lack the knowledge and ability to judge his qualifications.

A Federal District Court has held that the fact that other states permit the licensing of naturopaths under special legislation without requiring them to meet the qualifications of the general medical practice act does not mean that a state medical practice act which would apply to a naturopath would abridge anyone's rights. Hitchcock v. Collenberg, 140 F.Supp. 894 (Dist. Md. 1956), affirmed mem.op. 353 U.S. 919 (1957).

Maryland, like Nevada, remained free to protect its own residents, so long as the method chosen with respect to regulation of a particular trade or business essential to the public health and safety was not so unreasonable and extravagant as to interfere with property and personal rights of citizens unnecessarily and arbitrarily.

This same federal court rejected the other arguments that a state medical practice act when applied to a naturopath is an invalid exercise of police power and is arbitrary, unreasonable and discriminatory because it (1) required naturopaths to pass examinations in non-naturopathic subjects; (2) conferred exclusive jurisdiction over naturopaths on their medical competitors; and (3) contained special provisions

for the licensing of osteopaths, chiropractors, physical therapists, etc., but did not contain similar provisions for naturopaths. Hitchcock v. Collenberg, supra.

These same arguments have been rejected by other courts as well. In Aitchison v. State, supra, it is said, at page 500:

> It is beyond question that the state has the power to regulate any of the special systems or branches of the medical art independent of the general practice of medicine. The regulations adopted by the state, in the exercise of the power to regulate the treatment of disease, need not be uniform with respect to all methods and systems of practice, but distinctions may be made and schools or methods of practice may be exempted from the regulations or subjected to peculiar regulations as long as the discrimination is not arbitrary or unreasonable.

The "naturopath may practice without any license" argument was also rejected in Aitchison, where the court noted that such could not be the legislature's intent in view of the fact that many bills to regulate naturopathy as a special area of medicine had been introduced and rejected by the Maryland legislature. The same thing has occurred in our own Nevada Legislature in past years.

> The very fact that no such legislation has been passed indicates that the Legislature has not intended thus far to permit naturopaths to practice without a license. The Legislature has been careful to prevent medical treatments without the protection afforded by some official regulatory board. Aitchison v. State, supra, at 501.

The question of balancing the advantages and disadvantages of requiring a naturopath to meet the requirements of a medical education is for a state legislature to answer. It may reasonably believe that an education broader than that offered in the traditional naturopathic curriculum is necessary where a practitioner will be holding himself out to the public as capable of treating or curing many or almost all kinds of disease. Perhaps a state legislature may also reasonably believe such training would assist a naturopath in diagnosing ailments and determining which might better respond to treatment by a traditional physician or surgeon. Such rationalizations by a state legislature were cited favorably in England v. Louisiana St. Bd. of Medical Examiners, 246 F.Supp. 993 (E.D. La. 1965), affirmed mem.op. 385 U.S. 190 (1966), a case involving a chiropractor in a state with no special licensing law.

Other cases upholding as constitutional the application of the general state medical practice act to a naturopathic physician include Dantzler v. Callison, supra, and Davis v. Beeler, supra.

CONCLUSION—QUESTION TWO

The application of the Nevada Medical Practice Act, Chapter 630 of Nevada Revised Statutes, to a naturopathic physician is constitutional and does not constitute a violation of rights of due process and equal protection of the laws conferred by the federal and state constitutions.

The decision of the Idaho Supreme Court in State v. Smith, supra, is not at all in harmony with the other numerous cases on the questions discussed herein, and we therefore do not find Smith to be persuasive

or to have any value as a precedent. We reject the Smith decision for the same reasons stated by the District Court of Appeal in Oosterveen v. Bd. of Medical Examiners, 246 P.2d 136 (Cal.App. 1952).

Respectfully submitted,

ROBERT LIST, *Attorney General*
By WILLIAM E. ISAEFF, *Deputy Attorney General*

A14

LLER — STATE OF NEVADA — LAURY M. LEWIS, Governor

STATE INDUSTRIAL INSURANCE SYSTEM
1700 West Charleston Boulevard
P.O. Box 20329
Las Vegas, Nevada 89126-0329

March 23, 1989

Simone Bransch-Ferro
2359 Belvedere Drive
Henderson, NV 89014

RE: Claim No: 81-018151.9
Accident: 3-1-81
Employer: Ogden Food Service

Dar Ms. Bransch-Ferro:

After careful review and consideration it is the decision of the State Industrial Insurance System to reopen your above claim for treatment as recommended by Dr. Zvenia.

Please submit any outstanding medical bills pertaining to this reopening.

If anyone is aggrieved by this decision, they do have the right to an appeal. If this is the intent, please complete the enclosed basis for appeal form and return it to the Hearing's officer within sixty (60) days from the date of this letter.

If you have any questions, please contact this office at 388-3129.

Sincerely,

Jan Weintraub
Claims Examiner

JW:qt

cc: Employer
Dr. Zvenia
File

LICENSE

NO. 13

State of Nevada
Board of Naturopathic Healing

This Is To Certify, That Benjamin Zvenia, N.M.D.

having been duly examined and found qualified by the Board, as provided in N.R.S. Ch. 633.A inclusive, is hereby granted this license to practice Naturopathic Healing in the State of Nevada in accordance with and subject to the provisions of said law.

In Witness Whereof, the Naturopathic Board of Examiners has caused the Seal of the Board and their signatures to be affixed this 6th day of July 19 82.

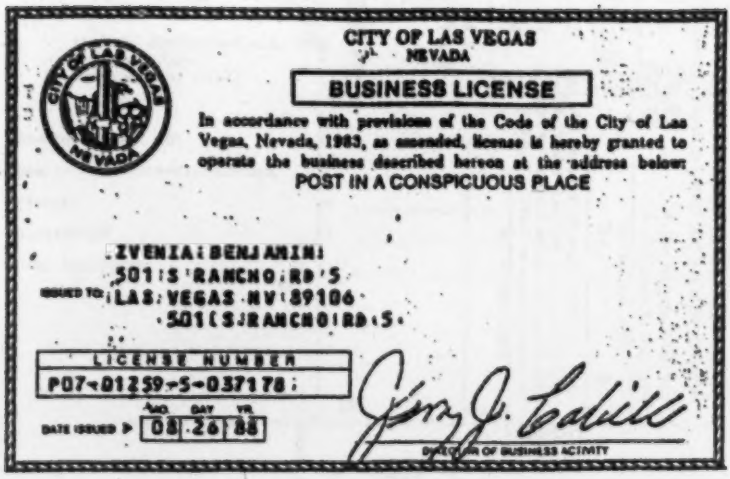
H.H. Letts ND
President

W. E. Dennis
Member

J. Fairchild Jr. ND
Secretary

This license must be renewed February 1 of Each year.

FACSIMILE OF ORIGINAL LICENSE



CITY OF LAS VEGAS
NEVADA

BUSINESS LICENSE

In accordance with provisions of the Code of the City of Las Vegas, Nevada, 1983, as amended, license is hereby granted to operate the business described hereon at the address below.

POST IN A CONSPICUOUS PLACE

ISSUED TO:
IZVENIA BENJAMIN
501 S RANCHO RD 5
LAS VEGAS NV 89106
501 S RANCHO RD 5

LICENSE NUMBER
P07-012359-5-037178

DATE ISSUED ▶ MO 08 DAY 26 YR 88

DIRECTOR OF BUSINESS ACTIVITY

CITY OF LAS VEGAS • P.O. BOX 1900 • LAS VEGAS, NV 89125
FLAT FEE BUSINESS LICENSE RENEWAL

DUE DATE: 05/01/90

LICENSE # P07-01259-5-037178

LOCATION: 501 S RANCHO DR 5

CURRENT LICENSE FEE $ 50.00
PAST DUE LICENSE FEE $ 57.50
TOTAL DUE $ 107.50

DATE PAID _____

AMOUNT PAID _____

CHECK # _____

DEPARTMENT OF BUSINESS ACTIVITY
(702) 386-6281

NAME ZVENIA BENJAMIN
ADDRESS P O BOX 72044
LAS VEGAS NV
89170

THIS IS YOUR COPY - KEEP FOR YOUR RECORDS

DETACH

CITY OF LAS VEGAS FLAT FEE BUSINESS LICENSE RENEWAL
DEPARTMENT OF BUSINESS ACTIVITY • P.O. BOX 1900 • LAS VEGAS, NV 89125
THE BUSINESS LICENSE FEE FOR THE PERIOD ENDING 6
MONTHS FROM THE DUE DATE IS NOW DUE AND PAYABLE

DUE DATE 05/01/90

CURRENT LICENSE FEE $ 50.00
PAST DUE LICENSE FEE $ 57.50

LICENSE NUMBER P07-01259-5-037178

TOTAL AMOUNT DUE $ 107.50

LOCATION 501 S RANCHO DR 5

Add 5% of Current License fee to total due if not paid within 15 days from due date. License expires if not paid within 30 days from due date. To reinstate add additional 15% of current license fee (LVMC 6.02.090)

TOTAL AMOUNT PAID

ZVENIA BENJAMIN
P O BOX 72044
LAS VEGAS NV
89170

RETURN THIS PART WITH PAYMENT

X 02016070125900001075001607012597

DETACH DISCARD

CLARK COUNTY DEPARTMENT OF BUSINESS LICENSE
BUSINESS LICENSE RENEWAL NOTICE

LICENSE NUMBER	DUE DATE
000091-320-2	01/31/90

NOTICE WILL BE SENT BEFORE DUE DATE, HOWEVER THE FAILURE TO NOTIFY SHALL NOT BE HELD TO WAIVE THE PAYMENT AND PROVIDED FURTHER, THAT THE ACTUAL RECEIPT OF SUCH NOTICE IS IN NO CASE REQUIRED.

ZVENIA, BENJAMIN M.M.D. PHD
P O BOX 72044
LAS VEGAS NV 89170

*PENALTY (IF ANY) IS 5% OF ITEM 1 IF NOT PAID WITHIN DAYS FROM DUE DATE. LICENS ILL BE REVOKED IF NOT PAI WITHIN 30 DAYS FROM DUE DA
THE 5% PENALTY PLUS A 1 REINSTATEMENT FEE WILL THE CHARGED TO REINSTATE LICEN

MAKE CHECKS PAYABLE TO: CL COUNTY DEPARTMENT OF BUSIN LICENSE

REGULAR LICENSE FEE	01	$100.00
PENALTY FROM PREVIOUS RENEWAL	25	_____
*PENALTY	26	_____
ADJUSTMENTS	27	_____
TOTAL SUBMITTED	28	_____

CUT ON ABOVE LINE, COMPLETE AND RETURN BOTTOM PORTION WITH REMITTANCE

LICENSE NUMBER	BUSINESS NAME	DUE DATE
000091-320-2	ZVENIA, BENJAMIN M.M.D. PHD	01/31/90

01	$100.00
25	_____
26	_____
27	_____
28	

onald C. Hayhurst, N.M.
P.O. Box 96273
Las Vegas, NV 89193
(702) 897 - 7053

To The Attention Nevada Supreme Court & the District Court for the Eighth Judicial District:

Reference: CO99837 - State of Nevada v. Zvenia

This is to advise you that Dr. Lavere H. Latta, member and President of the first "State Board of Naturopathic Examiners" for the State of Nevada, did indicate to me by telephonic conversation, in the latter part of April, 1992, that Dr. Benjamin Zvenia did receive a license to practice naturopathic medicine, issued by the State of Nevada.

That furthermore, Dr. Latta personally remembers Dr. Zvenia .

I swear and certify that this is a true statement as told to me by Dr. Lavere H. Latta.

DATED this 7th day of July, 1992.

D.C. Hayhurst

Donald C. Hayhurst, N.M.D.
President, Nevada Naturopathic
Medical Association

NANCY WHITE
Notary Public - State of Nevada
Appointment Recorded in Clark County
My Appointment Expires May 6, 1994

Certified Mail

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A15

District	Off.	Docket No. Yr.	Docket No. Number	Off.	Filing D. Mo.	Filing D. Day	Filing D. Yr.	J	Nature Suit	B 22	Judge	Mag.	Jury Dem.	Arb	Mult. Docket	Yr.	Docket Number
0978	3	87	00336	1	6	30	87	3	440		7805					87	00336

CAUSE: TITLE 42 SEC. 1983 - OTHER CIVIL RIGHTS

PLAINTIFFS

GOLINSKY, SIDNEY, ET AL.
ALLISON, VERA JOAN,
INDIVIDUALLY AND AS
REPRESENTATIVES OF
PERSONS LICENSED UNDER
CHAPTER 633A OF THE
NEVADA REVISED STATUTES;
DETAR, JOHN H., M.D.;
BRODIE, W. DOUGLAS, M.D.;
INDIVIDUALLY AND AS
REPRESENTATIVES OF A
CLASS;
HODGE, VALERIE E.;
BENTLEY, ROBYN;
CUTLER, BRADFORD F.;

DEFENDANTS

✓BRYAN, RICHARD H. GOVERNOR
AND;
✓THE STATE OF NEVADA

NOT EXEMPT FRCP 16(b)

ATTORNEYS

FOR PLAINTIFF(s):

David Horton, Esq.
P.O. Box 2107
Carson City, NV 89702
(702) 883-1966

FOR DEFENDANT(s):

Office of the Attorney General
Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710
William Isaeff, Deputy
Dana Sammons, Deputy
(702)885-4170

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL REPORTS PROCESSED
	DATE	RECEIPT NUMBER	C.D. NUMBER	Filing _____
				Termination _____
				Change _____

UNITED STATES DISTRICT COURT DOCKET

JS-11S (7/85)

JS 120M
(Rev. 1/78)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	CV-H-87-336-BRT DOCKET NO.
SIDNEY GOLINSKY, et.al.	RICHARD BRYAN, et.al.	PAGE 2 OF ___ PAGES

DATE	NR.	PROCEEDINGS
6/30/87	1	COMPLAINT w/exhbs. dr.
--	--	SUMMONS issd to cnsl for P. dr.
--	--	JS-5. (AT) dr.
--	2	APPLICATION for TRO & injctn obo P. blg.
--	3	REQUEST for hrg on #2 obo P. blg.
--	4	SUMMONS/RETURN srvd as to Governor Bryan by srvg Crystal Reynolds, Secretary as to complnt,summns,applicatn, & req. on 6/30/87. (p) blg.
--	5	ACKNOWLEDGMENT/SERVICE as to summns,complnt, applictn for TRO & prel injctn & mtn for ord shortening tm & req for hrg by srvg Crystal Reynolds Secretary for Governor Bryan on 6/30/87. (p) blg.
See Document #5a listed below. blg.		
7/6/87	6	AFFIDAVIT of Robyn Bartley in spprt of #2 obo Ps. (m) blg.
--	7	AFFIDAVIT of James Wm Forsythe, M.D. in spprt of #2 obo Ps. (m) blg.
7/7/87	8	ACKNOWLEDGMENT/SERVICE as to affdvt of Duane E. Christian srvd 7/7/87 obo Ps. blg.
--	9	ACKNOWLEDGMENT/SERVICE as to affdvt of James Forsythe, M.D.; Robyn Bartley & Robert Shaw srvd on 7/7/87 obo Ps. blg.
--	10	AFFIDAVIT of Duane E. Christian in spprt of #2 obo Ps. (m) blg.
--	11	AFFIDAVIT of Robert S. Shaw in spprt of #2 obo Ps. (m) blg.
6/30/87	5a	TEMPORARY RESTRAINING ORDER: (BRT) ORD Ds restrained fm enforcing provisns of sectn 2 of Chpt 542 of 1987 statutes of NV or fm revkng or treatng as exp naturopathic licenses issd in accord w/Chpt 633A of NV revised Statutes. No bond req. Mtn for prelim injctn set for hrg on 7/9/87 at 9:30am. Cps.Dist. blg.
7-8-87	12	AFFIDAVIT of Effie Deming w/attachs. (p-acknowledged) vf.
-	13	OPPOSITION (P&A's) to P/I obo Ds w/exhibs & prop ord. (m) vf.
7-9-87	14	ACKNOWLEDGEMENT of svc of TRO on 7-1-87 obo P. vf.
7-10-87	15	ACKNOWLEDGEMENT of svc of #13 on 7-8-87 obo P. vf.
--	16	MINUTES OF HEARING ON PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER dtd 7-9-87: (BRT) Wits test, exhibs adm, args hrd, matter taken under sub. (C/R John Molezzo) Cps dist 7-14-87. vf.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	CV-W-87-336-BRT DOCKET NO
SIDNEY GOLINSKY, MMD, et al	HONORABLE RICHARD BRYAN, etc, et al	PAGE 3 OF ___ PAGES

DATE	NR.	PROCEEDINGS
7/20/87	17	✓ANSWER obo Ds (m) ds.
7/29/87	18	ORDER: (BRT) ORD T/R/O dissolved. Mtn for prel/injctn denied. Actn dism for lack of subj matter jurisdctn. Cpy.Dist. (EOD: 8/4/87) blg.
8/4/87	19	JUDGMENT: (CCF/blg) ORD actn dism for lack of subj matter jurisdctn. Cps.Dist. (EOD: 8/4/87) blg.
--	--	JS-6. (AT) blg.
8/18/87	20	NOTICE/APPEAL obo Ps. Dist Crt flg fee pd. Cps dist 8/21/87. (SS) crc.
--	21	CERTIFICATE/SERVICE of items #20 & #22. crc.
--	22	DESIGNATION of Clerk's Record on Appeal obo P/Applnts. crc.
8/21/87	23	LETTER-(cpy) to Clerk of C/A fr D/C re notc/appeal. Cps dist 8/21/87. crc.
--	24	DOCKET FEE PAYMENT NOTIFICATION FORM (cpy). Orig to C/A. Cps dist 8/21/87 - Fees pd. crc.
9/22/87	25	DESIGNATION of R/T obo Applnt.crc.
10-13-87	--	TRANSCRIPT of proceeds (appeal) 7-9-87, Reno, NV (1cpy) nes.
12/14/87	26	CERTIFICATE/RECORD (cpy). Orig to C/A; cps to cnsl. (SS) crc.
--	27	MEMORANDUM to C/A & cnsl fr D/C re ord for ti sched. Cps to C/A, cnsl & C/R. crc.
11/14/88	28	JUDGMENT (ec) fr C/A affirming decision of USDC. crc.
11/17/88	29	ORDER ON MANDATE (BRT): ORD mandate of USCA be spread upon records of this Crt. Cps dist 11/17/88. crc.
5/2/90	30	RECEIPT for exhib rtnd to D. dr.

A16

AFFIDAVIT OF BENJAMIN P. ZVENIA, N.M.D.

STATE OF NEVADA)
) **SS:**
COUNTY OF CLARK)

I, **BENJAMIN ZVENIA**, being first duly sworn upon oath, deposes and says:

1. That I am the Petitioner in the attached action, PETITION FOR WRIT OF CETIORARI TO THE UNITED STATES SUPREME COURT, and the affiant herein and make this affidavit from personal knowledge, and am competent to testify to the facts contained herein if called to do so.

2. That from **July of 1982** until **April of 1989**, Affiant enjoyed the status of being a licensed naturopathic physician under former **N.R.S. 633A et seq.**, the Nevada Board of Naturopathic Healing.

3. That when the State in 1987 through the legislative process promulgated and passed AB 438 which enacted Chapter 542 - Statutes of the State of Nevada which repealed, revoked and expired all licenses issued by the Nevada Board of Naturopathic Healing, as well as the Board itself, at NO time ever did Affiant receive any form of Notice as required to be in compliance with due process of the law. Neither, is Affiant present at any hearing that were held on this matter for Affiant at the time of the hearings was out of the State of Nevada on Military Duty with the U.S. Army, Medical Service Corp. assigned to the 176th Medical Group, Los Alamitos, CA and co-attached for ADT/IRR purposes to WOMAC Army Hospital, Ft. Bragg, NC via the Academy of Health Sciences, Ft. Sam Houston, TX. Thus, Affiant never got the chance to contest the validity of what was happening to Affiant's medical license, nor has same ever had the opportunity to contest the change of Affiant's civilian standing that occurred while on Active Duty. It is also to be

duly noted that in this specific matter of notice to the licensees of NRS 633A as to what was taking place, the State Legislative Council Bureau **did not** notify the out-of-state licensees, of which Affiant would be a member of. Said, Legislative Counsel only advertised in the classified legal sections in the in-state newspapers **only** of what was taking place. Thus, Affiant could not have had any notice in this regard based upon the fact that Affiant was in the service of his country at that time and out of state.

4. That Affiant came back to Las Vegas, NV in December of 1987 and was told by both County and State Licensing entities that while Affiant's Board (Board of Naturopathic Healing, **NRS 633A**) was technically repealed, that Affiant **could** continue to practice naturopathy based upon a pending federal court case (***Golinski, et al. v. Bryan, et. al.*** Docket No. CV-87-337-BRT - Appendix Exhibit "XV") that issued a T.R.O. in this regard. Further, that said T.R.O. gave rise to Affiant receiving both his Clark County and City of Las Vegas Business Licenses (Appendix Exhibit "XIV"), as well as validly renewing same through the year of 1990.

5. That Affiant then duly opened up his medical practice first located at 3163 S. Eastern Ave., LV, NV 89109 in conjunction with three (3) other physicians licensed pursuant to NRS 630. Though this locale proved to be too small for all physicians concerned, so Affiant moved into a rent share arrangement with another allopathic physician located now at 501 S. Rancho, Ste. A-5, LV, NV 89106. Further, that Affiant based upon state naturopathic license and valid local licensing became a referred to independent medical examiner for the State Industrial Insurance System and built a successful medical practice in the six figure range.

6. Thus, Affiant has shown at all times and will still continue to show that same enjoyed the right to practice said profession of Naturopathy/Naturopathic Healing from July of 1982 to April 1989 as Affiant **was** licensed by the Board of Naturopathic Healing and as conversely admitted to by Respondent. Further, that the revocation of **N.R.S. 633A et seq.** with passage of Assembly Bill (AB) 438 in June of 1985 has resulted in a loss of liberty, property, professional recognition and financial wealth., Not to mention, the loss of beneficial profession of the healing arts to the citizens of Nevada.

7. That Affiant through personal knowledge NOW knows and deeply believes that Nevada did not take the time to understand or learn the history of Affiant's profession. For if they did, then the law (ie., Acts of Congress, federal preemption doctrine, common law lex scripta codification and interaction between state law and federal agency law) as relied on and proffered by Affiant would have been known and NOT interfered with. Nor, would Affiant have lost life, liberty, property and the pursuit of happiness which has occurred in this matter.

8. That based upon the above, Respondent COULD NOT have abrogated Affiant's profession/board, nor subsume said profession under the broad Respondent promulgated definition of "practice of medicine" where an relied on AGO (ie., **AGO 195** of 1975) is NOW used to deny licensing unless first trained as an allopathic physician. That the resulting created situation gives rise to facts in dispute by Court intervention.

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9. That all above "in toto" constitutes facts and genuine issues requiring resolvement by the Court.

Further your Affiant sayeth naught!

BENJAMIN F. ZVENIA, N.M.D
Affiant

SUBSCRIBED and **SWORN** to before me
on this 10 day of August, 1997.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
BARBARA BURNS
My Appointment Expires Oct. 16, 1999

A17

Effect of amendment. — The 1989 amendment deleted the last sentence of subsection 2 which read: "The court shall not stay the order of the board unless the board has failed to comply with the procedural requirements provided for in NRS 233B.140".

CHAPTER 633A.

NATUROPATHIC HEALING.

REPEALED.

633A.010 to 633A.500. Repealed by Acts 1987, ch. 542, § 1, p. 1236.

Editor's note. — Repealed NRS sections 633A.030, 633A.100 and 633A.330 were also amended by Acts 1987, ch. 658, §§ 32 to 34, pp. 1559 to 1561, respectively, effective June 18, 1987, pursuant to ch. 658, § 69, p. 1580.

CHAPTER 634.

CHIROPRACTIC.

GENERAL PROVISIONS

Sec.
634.010. Definitions.
634.014. "Chiropratic adjustment" defined.
634.015. "Gross malpractice" defined.
634.0175. "Subluxation complex" defined.
634.018. "Unprofessional conduct" defined.

NEVADA STATE BOARD OF CHIROPRACTIC EXAMINERS

634.025. Compensation of members and employees.
634.040. Meetings.

LICENSES

634.105. Practice by qualified applicant waiting to take examination.
634.110. Admission to practice.
634.121. Inactive status.

DISCIPLINARY ACTION

634.140. Grounds for initiating disciplinary action.
634.200. Judicial review.
634.208. Injunction against unlicensed practice.

PROHIBITED ACTS; PENALTIES

634.227. Unlawful acts; penalties.

General Provisions

634.010. Definitions.

As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 634.012 to 634.018, inclusive, have the meanings ascribed to them in those sections. (1923, pp. 21, 22; 1945, p. 136; 1949, p. 655; 1951, p. 258; 1955, p. 506; 1969, p. 347; 1971, pp. 356, 2036; 1977, p. 189; 1981, p. 593; 1989, ch. 552, § 4, p. 1168.)

Effect of amendment. — The 1989 amendment added a statutory reference which is contained in the existing statutory reference.

NELIS

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: Jan. 13, 19
TIME : 4:40 pm
LEG. DAY: 87 Regular
PAGE : 1 OF 1

1987

* AB 438 By Commerce NATUROPATHS

Repeals provisions regulating naturopathy as healing art. (BDR 54-1798)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

03/25	46	Read first time. Referred to Committee on Commerce. To printer.
03/26	47	From printer. To committee.
03/26	47	Dates discussed in committee: 5/6, ~~5/13~~, 5/22 (DP)
5/25	88	From committee: Do pass.
5/26	89	Read second time. To engrossment.
05/26	89	Engrossed.
05/27	90	Read third time. Passed. Title approved. (41 Yeas, 0 Nays, 0 Absent, 0 Excused, 1 Not Voting.) To Senate.
05/27	90	In Senate.
05/27	90	Read first time. Referred to Committee on Commerce and Labor. To committee.
05/27	90	Dates discussed in Committee: 6/4, 6/9 (PEND)
06/10	102	From committee: Do pass.
06/11	103	Read second time.
06/12	104	Read third time. Passed. Title approved. (15 Yeas, 6 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
06/13	105	In Assembly.
06/13	105	To enrollment.
06/15	107	Enrolled and delivered to Governor.
6/15	107	Approved by the Governor.
06/17	109	Chapter 542. Effective July 1, 1987.

(* = instrument from prior session)

STATUTES

OF THE

STATE OF NEVADA

PASSED AT THE

Sixty-first Session of the Legislature

1981

Begun on Monday, the nineteenth day of January, and ended on Thursday, the fourth day of June

VOLUME 2

CHAPTERS 582–782

STATUTORY TABLES

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even-numbered year, the county clerk shall establish election precincts, define the boundaries thereof, abolish, alter, consolidate and designate precincts as public convenience, necessity and economy may require in accordance with NRS 293.207 to 293.213, inclusive.

[2. On or before the 1st Wednesday in May in each year when a President of the United States is to be nominated and elected, the county clerk shall establish and define the boundaries of presidential primary election districts as provided in NRS 298.145.]

SEC. 2. NRS 353.264 is hereby amended to read as follows:

353.264 1. The reserve for statutory contingency fund is hereby created as a trust fund.

2. The state board of examiners shall administer the reserve for statutory contingency fund, and the money in the fund may be expended only for:

(a) The payment of claims which are obligations of the state under NRS 41.03435, 41.0347, 41.0349, 41.037, 176.485, 179.310, 212.040, 212.050, 212.070, 214.040, 282.290, 282.315, 293.253, 293.405, [298.155,] 353.120, 353.262, 412.154, and 475.235; and

(b) The payment of claims which are obligations of the state under:

(1) Chapter 472 of NRS arising from operations of the division of forestry directly involving the protection of life and property; and

(2) NRS 7.125, 176.223, 177.345, 179.225 and 213.153,

but such claims must be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for those purposes have been exhausted.

SEC. 3. NRS 298.095, 298.105, 298.115, 298.125, 298.135, 298.145, 298.155 and 298.165 are hereby repealed.

SEC. 4. Section 2 of this act shall become effective at 12:02 a.m. on July 1, 1981.

Assembly Bill No. 444—Assemblymen Rusk, Jeffrey, Bennett and Chaney

CHAPTER 745

AN ACT relating to health care; regulating the practice of naturopathic healing; creating the board of naturopathic healing; providing for its organization, powers and duties; providing for licensing and disciplinary actions; requiring supervision by a physician; providing penalties; and providing other matters properly relating thereto.

[Approved June 15, 1981]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Title 54 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 55, inclusive, of this act.

SEC. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.

SEC. 3. "Board" means the board of naturopathic healing.

SEC. 4. "Gross malpractice" means malpractice where the failure to exercise the requisite degree of care, diligence or skill consists of:

1. Ministering to a patient while the naturopath is under the influence of alcohol or any controlled substance as defined in chapter 453 of NRS;
2. Gross negligence;
3. Willful disregard of established naturopathic procedures; or
4. Willful and consistent use of naturopathic procedures, services or treatment considered by naturopath in the community to be inappropriate or unnecessary in the cases where used.

SEC. 5. "Healing art" means any system, treatment, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition for the practice of which long periods of specialized education and training and a degree of specialized knowledge of an intellectual as well as physical nature are required.

SEC. 6. "Malpractice" means failure on the part of a naturopath to exercise the degree of care, diligence and skill ordinarily exercised by naturopaths in good standing in the community in which he practices.

SEC. 7. 1. "Naturopathic healing" means the philosophy, art and science of natural healing including the use of natural agencies, forces and substances, employing accepted procedures for diagnosis and treatment of human disorders and using diet and nutrition, including vitamins, fresh or dried herbs, minerals, enzymes and tissue concentrates and manual manipulation, including the physical, chemical and other properties of heat, light, water and electricity.

2. The term does not include the use of X-ray or radium treatments, major or minor surgery, obstetrics, prescribing drugs, or invasive procedures except venipuncture for the withdrawal of blood for diagnosis.

SEC. 8. "Naturopath" means a person who:

1. Is a graduate of an academic program approved by the board;
2. Has received from the board a license to practice naturopathic healing; and
3. Practices naturopathic healing under the supervision of a physician licensed under chapter 630 or 633 of NRS.

SEC. 9. "Professional incompetence" means lack of ability safely and skillfully to practice naturopathic healing, or to practice one or more of its specified branches, arising from:

1. Lack of knowledge or training;
2. Impaired physical or mental capability of the naturopath;
3. Indulgence in the use of alcohol or any controlled substance; or
4. Any other sole or contributing cause.

SEC. 10. "School of naturopathic healing" means a school approved by the board which:

1. Requires as a prerequisite to graduation 4 years of actual attendance at the school and successful completion of a curriculum which meets the requirements of this chapter; or
2. Requires as a prerequisite to graduation 1 year of post-graduate training for persons who have degrees from medical, osteopathic or chiropractic schools.

SEC. 11. 1. "Unprofessional conduct" includes:

(a) Willfully making a false or fraudulent statement or submitting a forged or false document in applying for a license to practice naturopathic healing.

(b) Failure of a licensee to designate his practice in the professional use of his name by using the term naturopath.

(c) Directly or indirectly giving to or receiving from any person any fee, commission, rebate or other form of compensation for sending, referring or otherwise inducing a person to communicate with a naturopath in his professional capacity or for any professional services not actually and personally rendered, except as provided in subsection 2.

(d) Employing, directly or indirectly, any suspended or unlicensed person in the practice of naturopathic healing, or the aiding or abetting of any unlicensed person to practice naturopathic healing.

(e) Advertising the practice of naturopathic healing in a manner which does not conform to the guidelines established by board regulation.

(f) Engaging in any:

(1) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical; or

(2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence.

(g) Administering, dispensing or prescribing any controlled substance as defined in chapter 453 of NRS, or any dangerous drug as defined in chapter 454 of NRS.

(h) Habitual drunkenness or habitual addiction to the use of a controlled substance as defined in chapter 453 of NRS.

(i) Performing, assisting or advising an abortion or in the injection of any liquid silicone substance into the human body.

(j) Willful disclosure of a communication privileged under a statute or court order.

(k) Willful disobedience of the regulations of the state board of health or of the board of naturopathic healing.

(l) Willfully representing with the purpose of obtaining compensation or other advantages for himself or for any other person that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

(m) Using any designation other than as authorized in this chapter or representing himself as being in the practice of a healing art for which he is not licensed.

(n) Practicing obstetrics, performing major or minor surgery or invasive procedures except venipuncture for the withdrawal of blood for diagnosis or using X-ray or radium treatments.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any prohibition made in this chapter.

2. It is not unprofessional conduct:

(a) For persons holding valid licenses under this chapter to practice naturopathic healing in partnership under a partnership agreement or in a corporation or an association authorized by law, or to pool, share, divide or apportion the fees and money received by them or by the

partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association; or

(b) For two or more persons holding valid licenses under this chapter to receive adequate compensation for concurrently rendering professional care to a patient and dividing a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and the responsibility assumed by each.

SEC. 12. The purpose of licensing naturopaths is to protect the public health and safety and the general welfare of the people of this state. Any license issued pursuant to this chapter is a revocable privilege and a holder of such a license does not acquire thereby any vested right.

SEC. 13. All state and local governmental regulations relative to the reporting of births and deaths in any matter pertaining to the public health apply to naturopaths, but the reports of births and deaths shall be signed by the naturopath's supervising physician.

SEC. 14. 1. This chapter does not apply to the practice of medicine under chapter 630 or 633 of NRS, dentistry, chiropractic, podiatry, optometry, faith or Christian Science healing, nursing, veterinary medicine or hearing aid fitting.

2. This chapter does not repeal or affect any law of this state regulating or affecting any other healing art.

3. This chapter does not prohibit:

(a) Gratuitous services of a person in cases of emergency.

(b) The domestic administration of family remedies.

SEC. 15. 1. A naturopath may not practice naturopathic healing unless he is under the supervision of a physician licensed under chapter 630 or 633 of NRS.

2. Nothing in this chapter authorizes a naturopath to perform those functions and duties specifically delegated by law to physicians, dentists, nurses, osteopaths, chiropractors, practitioners of traditional Oriental medicine, podiatrists, optometrists, hearing aid specialists or physical therapists.

SEC. 16. 1. The board of naturopathic healing consists of five members appointed by the governor.

2. Three members of the board must:

(a) Be licensed under this chapter, except the initial members who must be licensed as naturopaths in another state;

(b) Be actually engaged in the practice of naturopathic healing in this state, except the initial members who must have been so engaged in another state; and

(c) Have been so engaged in this state for more than 2 years preceding their appointment, except the initial members who must have been so engaged in another state.

3. One member must be a physician licensed under chapter 630 of NRS and a resident of Nevada.

4. The remaining member must be a resident of the State of Nevada:

(a) Not licensed in any state to practice any healing art; and

(b) Not actively engaged in the administration of any health and care facility.

5. Before entering upon the duties of his office, each member of the board shall take:

(a) The constitutional oath of office; and

(b) An oath that he is legally qualified to serve on the board.

6. As used in this section "health and care facility" has the meaning ascribed to it in NRS 449.007.

7. Upon expiration of his term of office, a member must continue to serve until his successor is appointed and qualifies.

8. If a vacancy occurs on the board, a member is absent from the state for a period of 6 months or more without the board's permission, or a member fails to attend meetings of the board or to the business of the board, as determined necessary in its discretion, the board shall notify the governor, and the governor shall appoint a person qualified under this chapter to replace the member for the remainder of the unexpired term.

SEC. 17. 1. The board shall elect from its members a president, a vice president and a secretary-treasurer, who hold their respective offices at its pleasure. The board may fix and pay a salary to the secretary-treasurer.

2. The board shall meet at least twice annually and may meet at other times on the call of the president or a majority of its members.

3. A majority of the board constitutes a quorum to transact all business.

SEC. 18. Each member of the board is entitled to receive:

1. A salary of not more than $40 per day, as fixed by the board, while engaged in its business.

2. Actual and necessary expenses for subsistence and lodging, not to exceed $25 per day, and for transportation, while traveling on the business of the board.

SEC. 19. The board shall operate on the basis of a fiscal year commencing on July 1 and terminating on June 30.

SEC. 20. 1. All reasonable expenses incurred by the board in carrying out the provisions of this chapter must be paid from the fees which it receives, and no part of the salaries or expenses of the board may be paid out of the state general fund.

2. All money received by the board must be deposited in qualified banks or savings and loan associations in this state and paid out on its order for its expenses.

SEC. 21. The board may:

1. Maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

2. Employ attorneys, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

SEC. 22. 1. For the purposes of this chapter the secretary or president of the board may issue subpenas to compel the attendance of witnesses and the production of books and papers.

2. If any witness refuses to attend or testify or produce any books and papers as required by the subpena, the secretary or president of the board may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpenaed by the board pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpena before the board which is named in the subpena, or has refused to answer questions propounded to him,

and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the board.

3. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the board. A certified copy of the order must be served upon the witness.

4. If it appears to the court that the subpena was regularly issued by the board, the court shall enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness must be dealt with as for contempt of court.

SEC. 23. The board shall:

1. Adopt and enforce regulations necessary to enable it to carry out its duties under this chapter, including but not limited to regulations which establish the principles of ethics to be used as the basis for determining whether conduct which does not constitute malpractice is unethical.

2. Keep a record of its proceedings relating to licensing and disciplinary actions. The records must be open to public inspection at all reasonable times and must contain the name, known place of business and residence, and the date and number of the license of every naturopath licensed under this chapter.

SEC. 24. An applicant for a license to practice naturopathic healing must be issued a license by the board if he:

1. Is 21 years of age or older;

2. Is a citizen of the United States or is legally entitled to live and work in the United States;

3. Is a graduate of a school of naturopathic healing which is approved by the board;

4. Applies for the license;

5. Passes the examination prescribed by the board; and

6. Pays the fees provided for in this chapter.

SEC. 25. 1. Every applicant for a license shall:

(a) File an application with the board in the manner prescribed by regulations of the board;

(b) Submit verified proof satisfactory to the board that he meets the age, citizenship and educational requirements prescribed by this chapter; and

(c) Pay in advance to the board the initial license fee prescribed by the board.

2. The board may hold hearings and conduct investigations into any matter related to the application and in addition to the proofs required by subsection 1 may take such further evidence and require such other documents or proof of qualifications as it deems proper.

3. The board may reject an application if it determines that any credential submitted is false.

SEC. 26. 1. Examinations must be held at least twice a year at the time and place fixed by the board. All applicants must be notified in writing of the examinations.

2. The examinations must be fair and impartial, practical in character, and the questions must be designed to discover the applicant's fitness.

3. The board may employ specialists and other professional consultants or examining services in conducting the examination.

4. The member of the board who is not licensed in any state to practice any healing art may not participate in preparing, conducting or grading any examination required by the board.

SEC. 27. The board may approve a school of naturopathic healing which:

1. Accepts only graduates of standard high schools and persons with equivalent education, and which offers a curriculum consisting of at least 4,500 hours of instruction, including adequate instruction in the following subjects:

(a) Anatomy and histology;

(b) Physiology and biology;

(c) Organic chemistry, biochemistry, autotherapy, endocrinology, phytotherapy, dietetics and pharmacology;

(d) Pathology, bacteriology, immunology and clinical laboratory procedures;

(e) Diagnosis, including use of physical, clinical, X-ray and laboratory methods, and symptomatology;

(f) Public health, first aid, hygiene, nutrition and sanitation;

(g) Embryology, gynecology, obstetrics, proctology, urology, reontgenology and toxicology;

(h) Neurology, psychiatry and psychology;

(i) Orthopedics, pediatrics and geriatrics;

(j) Eye, ear, nose and throat practice;

(k) Clinical practice, including emergency procedures;

(l) Naturopathic principles, philosophy and therapeutics; and

(m) Manipulation and homeopathy.

2. Accepts persons who have degrees from accredited medical, osteopathic or chiropractic schools and offer a minimum of 1,000 hours of instruction in:

(a) Phytotherapy, including herbalism;

(b) Nutrition;

(c) Manipulation;

(d) Homeopathy; and

(e) Naturopathic principles, philosophy and therapeutics.

The board may inspect institutions which purport to be schools of naturopathy and issue or refuse to issue certificates of approval.

SEC. 28. 1. If an applicant fails in a first examination, he may be reexamined after not less than 6 months.

2. If he fails in a second examination, he is not thereafter entitled to another examination within less than 1 year after the date of the second examination, and prior thereto he shall furnish proof to the

board of further postgraduate study following the second examination satisfactory to the board.

3. Each applicant who fails an examination and who is permitted to be reexamined shall pay for each reexamination the reexamination fee prescribed by the board.

4. If an applicant does not appear for examination, for any reason deemed sufficient by the board, the board may refund a portion of the initial license fee not to exceed one-half of the fee upon the request of the applicant. There may be no refund of the initial license fee if an applicant appears for examination.

SECS. 29 to 32. (Deleted by amendment.)

SEC. 33. Each license issued by the board:

1. Must bear a seal adopted by the board and the signatures of its president and secretary; and

2. Authorizes the holder to practice naturopathic healing so long as it is kept in force by appropriate renewal and is not revoked or suspended.

SEC. 34. 1. Except as provided in section 36 of this act, every holder of a license issued under this chapter may renew his license, on or before February 1 of each calendar year after its issuance by:

(a) Applying for renewal on forms provided by the board;

(b) Paying the annual renewal fee prescribed by the board; and

(c) Furnishing proof of attendance at such continuing education courses as are required by the board, not to exceed 12 hours since his last renewal or licensing.

2. The secretary of the board shall notify each licensee of the renewal requirement not less than 60 days before the date of renewal.

SEC. 35. 1. If a licensee fails to comply with the requirements of section 34 of this act within 30 days after the renewal date, the board shall give 30 days' notice of failure to renew and of revocation of license by certified mail to the licensee at his last address registered with the board. If the license is not renewed before the expiration of the 30 days' notice, the license is automatically revoked without any further notice or a hearing and the board shall file a copy of the notice with the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

2. A person whose license is revoked under this section may apply to the board for restoration of his license upon:

(a) Payment of all past due renewal fees and the late payment fee prescribed by the board; and

(b) Stating under oath in writing that he has not withheld information from the board which if disclosed would furnish grounds for disciplinary action under this chapter.

SEC. 36. 1. A licensee who retires from the practice of naturopathic healing need not annually renew his license after he files with the board an affidavit stating the date on which he retired from practice and such other facts to verify his retirement as the board deems necessary.

2. A retired licensee who desires to return to practice may apply to renew his license by paying all back annual renewal fees from the date of retirement and submitting verified evidence satisfactory to the board

that he has attended such continuing education courses or programs as are required by the board.

SEC. 37. The board shall charge and collect fees not to exceed the following amounts:

Initial license fee	$200
Annual renewal fee	300
Reexamination fee	200
Late payment fee	100

SEC. 38. The grounds for initiating disciplinary action under this chapter are:

1. Unprofessional conduct.
2. Conviction of:

(a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance as defined in chapter 453 of NRS or dangerous drug as defined in chapter 454 of NRS;

(b) A felony; or

(c) Any offense involving moral turpitude.

3. Suspension or revocation of the license to practice naturopathic healing by any other jurisdiction.
4. Gross or repeated malpractice.
5. Professional incompetence.

SEC. 39. The board or any of its members, any medical review panel of a medical society which becomes aware that any one or combination of the grounds for initiating disciplinary action may exist as to a person practicing naturopathic healing in this state shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the board or with a society of naturopathic healing of the county in which the person charged has his office if there is such a society in the county.

SEC. 40. 1. When a complaint is filed:

(a) With the board, it shall be reviewed by the board.

(b) With a society of naturopathic healing, the society shall forward a copy of the complaint to the board for review.

2. If, from the complaint or from other official records, it appears that the complaint is not frivolous and the complaint charges:

(a) Unprofessional conduct, a conviction or the suspension or revocation of a license to practice naturopathic healing, the board shall proceed with appropriate disciplinary action.

(b) Gross or repeated malpractice or professional incompetence, the board shall transmit the original complaint, along with further facts or information derived from its own review, to the attorney general.

SEC. 41. 1. The attorney general shall conduct an investigation of each complaint transmitted to him to determine whether it warrants proceedings for modification, suspension or revocation of license. If he determines that such further proceedings are warranted, he shall report the results of his investigation together with his recommendation to the board in a manner which does not violate the right of the person charged in the complaint to due process in any later hearing before the board.

2. The board shall promptly make a determination with respect to

each complaint reported to it by the attorney general as to what action shall be pursued. The board shall:

(a) Dismiss the complaint; or

(b) Proceed with appropriate disciplinary action.

SEC. 42. 1. If the board determines that a complaint is not frivolous, the board may require the person charged in the complaint to submit to a mental or physical examination by physicians designated by the board.

2. For the purposes of this section:

(a) Every person licensed under this chapter who accepts the privilege of practicing naturopathic healing in this state shall be deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board.

(b) The testimony or examination reports of the examining physicians are not privileged communications.

3. Except in extraordinary circumstances, as determined by the board, the failure of a naturopath licensed under this chapter to submit to an examination when directed as provided in this section constitutes an admission of the charges against him.

SEC. 43. If the board has reason to believe that the conduct of any naturopath has raised a reasonable question as to his competence to practice naturopathic healing with reasonable skill and safety to patients, the board may cause a medical competency examination of the naturopath for purposes of determining his fitness to practice naturopathic healing with reasonable skill and safety to patients.

SEC. 44. If the board issues an order summarily suspending the license of a naturopath pending proceedings for disciplinary action and requires the naturopath to submit to a mental or physical examination or a medical competency examination, the examination must be conducted and the results obtained not later than 60 days after the board issues its order.

SEC. 45. If the board issues an order summarily suspending the license of a naturopath pending proceedings for disciplinary action, the court shall not stay that order unless the board fails to institute and determine such proceedings as promptly as the requirements for investigation of the case reasonably allow.

SEC. 46. 1. In addition to any other remedy provided by law, the board, through its president, secretary or its attorney, or the attorney general, may apply to any court of competent jurisdiction to enjoin any unprofessional conduct of a naturopath which is harmful to the public or to limit the naturopath's practice or suspend his license to practice naturopathic healing as provided in this section.

2. The court in a proper case may issue a temporary restraining order or a preliminary injunction for such purposes:

(a) Without proof of actual damage sustained by any person, this provision being a preventive as well as a punitive measure; and

(b) Pending proceedings for disciplinary action by the board. These proceedings must be instituted and determined as promptly as the requirements for investigation of the case reasonably allow.

SEC. 47. All proceedings subsequent to the filing of a complaint are

confidential, except to the extent necessary for the conduct of an examination, until the board determines to proceed with disciplinary action. If the board dismisses the complaint, the proceedings remain confidential. If the board proceeds with disciplinary action, confidentiality concerning the proceedings is no longer required.

SEC. 48. If:

1. A complaint charging unprofessional conduct, a conviction or the suspension or revocation of a license to practice naturopathic healing is not frivolous; or

2. With respect to a complaint reported by the attorney general, the board has determined to proceed with disciplinary action,

the secretary of the board shall fix a time and place for a hearing and cause a notice of the hearing and a formal complaint prepared by the board to be served on the person charged at least 30 days before the date fixed for the hearing.

SEC. 49. 1. Service of process made under this chapter must be personal or by registered or certified mail with return receipt requested, addressed to the naturopath at his last known address, as indicated on the records of the board, if possible. If personal service cannot be made and if mail notice is returned undelivered, the secretary of the board shall cause notice of hearing to be published once a week for 4 consecutive weeks in a newspaper published in the county of the physician's last known address or, if no newspaper is published in that county, then in a newspaper widely distributed in that county.

2. Proof of service of process or publication of notice made under this chapter must be filed with the secretary of the board and be recorded in the minutes of the board.

SEC. 50. In any disciplinary proceeding before the board:

1. Proof of actual injury need not be established where the complaint charges deceptive or unethical professional conduct or practice of naturopathic healing which is harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to practice naturopathic healing is conclusive evidence of its occurrence.

SEC. 51. 1. The person charged is entitled to a hearing before the board, but the failure of the person charged to attend his hearing or his failure to defend himself does not delay or void the proceedings. The board may, for good cause shown, continue any hearing from time to time.

2. If the board finds the person guilty as charged in the complaint, it may by order:

(a) Place the person on probation for a specified period or until further order of the board.

(b) Administer to the person a public or private reprimand.

(c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of naturopathic healing.

(d) Suspend the license of the person to practice naturopathic healing for a specified period or until further order of the board.

(e) Revoke the license of the person to practice naturopathic healing.

The order of the board may contain other terms, provisions or conditions which the board deems proper and which are not inconsistent with law.

SEC. 52. 1. Any person who has been placed on probation or whose license has been limited, suspended or revoked by the board is entitled to judicial review of the board's order as provided by law.

2. Every order of the board which limits the practice of naturopathic healing or suspends or revokes a license is effective from the date the secretary certifies the order to the proper county recorder until the order is modified or reversed by a final judgment of the court. The court shall not stay the order of the board unless the board has failed to comply with the procedural requirements provided for in NRS 233B.140.

3. The district court shall give a petition for judicial review of the board's order priority over other civil matters which are not expressly given that priority by law.

SEC. 53. 1. Any person:

(a) Whose practice of naturopathic healing has been limited; or

(b) Whose license to practice naturopathic healing has been:

(1) Suspended until further order; or

(2) Revoked,

by an order of the board may apply to the board after a reasonable period for removal of the limitation or restoration of his license.

2. In hearing the application, the board:

(a) May require the person to submit to a mental or physical examination by physicians or other appropriate persons whom it designates and submit such other evidence of changed conditions and of fitness as it deems proper;

(b) Shall determine whether under all the circumstances the time of the application is reasonable; and

(c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrant.

SEC. 54. The board of naturopathic healing, a society of naturopathic healing or any person who or other organization which initiates or assists in any lawful investigation or proceeding concerning the discipline of a naturopath for gross malpractice, repeated malpractice, professional incompetence or unprofessional conduct is immune from any civil action for that initiation or assistance or any consequential damages, if the person or organization acted without malicious intent.

SEC. 55. A person who:

1. Practices naturopathic healing:

(a) Without a license valid under this chapter; or

(b) Beyond the limitations imposed by this chapter or ordered upon his practice by the board or the court;

2. Presents as his own the diploma, license or credentials of another;

3. Gives either false or forged evidence of any kind to the board or any of its members in connection with an application for a license;

4. Files for record the license issued to another, falsely claiming himself to be the person named in the license, or falsely claiming himself to be the person entitled to the license; or

5. Practices naturopathic healing under a false or assumed name or falsely personates another licensee of a like or different name,

shall be punished by imprisonment in the state prison for not less than 1 nor more than 6 years.

SEC. 56. 1. The governor shall appoint:

(a) Three persons who are qualified pursuant to subsection 2;

(b) One person who is qualified pursuant to subsection 3; and

(c) One person who is qualified pursuant to subsection 4,

of section 16 of this act, to the board of naturopathic healing.

2. Of the members of the board appointed by the governor pursuant to subsection 1:

(a) Two members, including one person who is qualified under subsection 2 of section 16 of this act and the person qualified under subsection 3 of section 16 of this act shall serve terms ending on June 30, 1985;

(b) One member shall serve a term ending June 30, 1984;

(c) One member shall serve a term ending June 30, 1983; and

(d) One member shall serve a term ending June 30, 1982.

Senate Bill No. 500—Senators Gibson and Lamb

CHAPTER 746

AN ACT relating to physicians; creating an advisory board on homeopathic medicine; and providing other matters properly relating thereto.

[Approved June 15, 1981]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 630 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The advisory board on homeopathic medicine, consisting of three members appointed by the governor, is hereby created.

2. Each member of the board must be a physician who is licensed to practice medicine in this state and is qualified in the principles and practices of homeopathic medicine.

3. The advisory board shall advise the board of medical examiners of the State of Nevada on the subject of homeopathic medicine upon request by the board of medical examiners.